IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF INDIANA
HAMMOND DIVISION

UNITED STATES OF AMERICA, Plaintiff, and THE STATE OF INDIANA, THE STATE OF OHIO, and the NORTHWEST AIR POLLUTION AUTHORITY, Plaintiff-Intervenors, v. BP PRODUCTS NORTH AMERICA INC., BP EXPLORATION & OIL CO., AMOCO OIL COMPANY, and ATLANTIC RICHFIELD COMPANY Defendants.	)	Civil No. 2:96 CV 095 RL Senior Judge Rudy Lozano Magistrate Judge Rodovich

SUPPLEMENTAL THIRD AMENDED COMPLAINT

The United States of America, by the authority of the Attorney General of the United States and through the undersigned attorneys, acting at the request of the Administrator of the United States Environmental Protection Agency ("EPA"), files this Supplemental Third Amended Complaint and alleges as follows:

NATURE OF ACTION

1. This civil action was originally brought against BP Exploration & Oil Co. ("BPX&O"), Amoco Oil Company ("Amoco"), and Atlantic Richfield Company ("Arco"),

pursuant to Section 113(b) of the Clean Air Act ("CAA" or the Act), 42 U.S.C. § 7413(b), for alleged environmental violations at petroleum refineries at the following locations: a) BPX&O: Toledo, Ohio; b) Amoco: Mandan, North Dakota; Salt Lake City, Utah; Texas City, Texas; Whiting, Indiana; and Yorktown, Virginia; and c) Arco: Cherry Point, Washington and Carson, California.

2. These eight refineries were alleged to have been in violation of EPA's regulations implementing the following Clean Air Act statutory and regulatory requirements applicable to the petroleum refining industry: Prevention of Significant Deterioration ("PSD"), Part C of Title I of the Act, 42 U.S.C. § 7470-7492, and the regulations promulgated thereunder at 40 C.F.R. § 52.21, and Nonattainment New Source Review, Part D of Title I of the Act, 42 U.S.C. §§ 7501-7515, and the regulations promulgated thereunder at 40 C.F.R. § 51.165, Part 51, Appendix S, and § 52.24 ("PSD/NSR Regulations"); New Source Performance Standards ("NSPS"), 40 C.F.R. Part 60, Subpart J; Leak Detection and Repair ("LDAR"), 40 C.F.R. Parts 60 and 63; National Emission Standards for Hazardous Air Pollutants ("NESHAP") for Benzene, 40 C.F.R. Part 61; and the California, Indiana, Louisiana, North Dakota, Ohio, Texas, Utah, Virginia, and Washington state implementation plans ("SIPs") which incorporate and/or implement the above-listed federal regulations.

3. The United States also alleged that BPX&O, Amoco, and Arco violated the following federal environmental statutes and their implementing regulations: the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. § 9603(a); the Emergency Planning and Community Right to Know Act ("EPCRA"), 42 U.S.C. § 11004(a) and the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. § 6901, et. seq.

4. In 2001, this Court entered a Consent Decree resolving the allegations against BPX&O, Amoco, and Arco in the United States' Third Amended Complaint. The Consent Decree required BPX&O, Amoco, and Arco to perform an array of injunctive relief at the

refineries listed above and pay a civil penalty in resolution of the claims alleged in the Third Amended Complaint.

5. Since entry of the Consent Decree, BP Products North America Inc. (f/k/a Amoco and hereinafter referred to as "BP Products") succeeded to the interests of BPX&O. BP Products is named as an additional Defendant in this Supplemental Third Amended Complaint. BP Products is the current owner and operator of the petroleum refineries in Texas City, Texas (the "Texas City Refinery"); Whiting, Indiana; Toledo, Ohio; Carson, California; and Cherry Point, Washington.

6. Since entry of the Consent Decree, five amendments to the Consent Decree have been entered by this Court. Some of these amendments reflect the sale of the Mandan, North Dakota; Salt Lake City, Utah; and Yorktown, Virginia petroleum refineries originally subject to the Consent Decree. These amendments require the new owners and/or operators to assume the Consent Decree's obligations for these refineries. Other amendments impose certain emissions limits established pursuant to the Consent Decree.

7. Since entry of the Consent Decree, the Texas City Refinery has failed to comply with the Benzene Waste NESHAP compliance option (the "2 Mg Compliance Option") required under Paragraph 19.A.i. of the Consent Decree.

8. In 2005, the EPA conducted an inspection of the Texas City Refinery to review its compliance with the terms of the Consent Decree, the CAA, and certain CAA regulations. This inspection revealed evidence of non-compliance at the Texas City Refinery with the Consent Decree, the CAA, and certain CAA regulations.

9. Based on EPA's inspection of the Texas City Refinery and BP Products' violations of the Consent Decree, the United States alleges supplemental claims for relief under the CAA as set forth below in Supplemental Claims for Relief Twenty-Six through Thirty-Eight.

10. As required by Local Rule 15.1, the United States reproduces the entirety of the

Third Amended Complaint, as supplemented herein. However, the only new relief sought by the United States under the Supplemental Third Amended Complaint pertains solely to the Texas City Refinery and is based solely upon the allegations of Supplemental Claims for Relief Twenty-Six through Thirty-Eight herein and BP Products' violations of the Consent Decree.

11. The United States seeks an injunction ordering BP Products to comply with the Consent Decree, the CAA, and the laws and regulations promulgated thereunder, and to pay civil penalties for BP Products' past and ongoing violations.

JURISDICTION AND VENUE

12. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331, 1345, and 1355; Section 113(b) of the CAA, 42 U.S.C. § 7413(b); Sections 109(c) and 113(b) of CERCLA, 42 U.S.C. §§ 9609(c) and 9613(b); Sections 325(a), (b), and (c) of EPCRA, 42 U.S.C. § 11045(a), (b), and (c); and Sections 3004 and 3005 of RCRA, 42 U.S.C. §§ 6924 and 6925.

13. Venue is proper in this District pursuant to 28 U.S.C. §§ 1391(b) and (c), and 1395(a); Section 113(b) of the CAA, 42 U.S.C. § 7413(b); Section 325(b)(3) of EPCRA, 42 U.S.C. § 11045(b)(3), and Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), because BP Products resides within this district and certain of the violations alleged herein occurred at the Whiting refinery, which is located in this district. In addition, BP Products does not object to venue in this Court.

NOTICE TO STATES

14. Notice of the commencement of the original action was given to the: a) State of Washington, State of California, State of North Dakota, State of Utah, State of Ohio, State of Indiana, Commonwealth of Virginia, State of Texas, and State of Louisiana at various times as required by Sections 113(a)(1) and 113(b) of the CAA, 42 U.S.C. §§ 7413(a)(1) and 7413(b); and b) the State of Indiana as required by Section 3008(a)(2) of RCRA, 42 U.S.C.

§ 6928(a)(2). Notice under Section 113(a)(1) of the CAA, 42 U.S.C. § 7413(a)(1), to the above-identified States was issued at least thirty (30) days prior to the filing of the original complaint.

DEFENDANTS

15. At all times relevant hereto, Arco was a corporation doing business at Cherry Point, Washington and Carson, California.

16. At all times relevant hereto, Amoco was a corporation doing business at Mandan, North Dakota; Salt Lake City, Utah; Texas City, Texas; Whiting, Indiana; and Yorktown, Virginia.

17. At all times relevant hereto, BPX&O was a corporation doing business at Toledo, Ohio.

18. BP Products is a corporation incorporated under the laws of the State of Maryland. BP Products is, and at all times relevant to the Supplemental Third Amended Complaint has been, the "owner" and "operator", within the meaning of Section 112(a)(9) of the CAA, 42 U.S.C. § 7412(a)(9), of petroleum refineries located in Texas City, Texas; Whiting, Indiana; and other places within the United States.

19. Each company is a "person" as defined in Section 302(e) of the CAA, 42 U.S.C. §7602(e); Section 101(21) of CERCLA, 42 U.S.C. § 9601 (21); Section 329(7) of EPCRA, 42 U.S.C. §11049(7); Section 1004(15) of RCRA, 42 U.S.C. §6903(15); and applicable federal and state regulations promulgated pursuant to these statutes. Notice under Section 113(a)(1) of the CAA, 42 U.S.C. § 7413(a)(1), was issued to the Defendants thirty (30) days prior to the filing of the original complaint.

STATUTORY AND REGULATORY BACKGROUND

CLEAN AIR ACT REQUIREMENTS

20. The Clean Air Act established a regulatory scheme designed to protect and enhance the quality of the nation's air so as to promote the public health and welfare and the

productive capacity of its population. Section 101(b)(1) of the Act, 42 U.S.C. § 7401(b)(1).

21. Section 109 of the Act, 42 U.S.C. § 7409, requires the Administrator of EPA to promulgate regulations establishing primary and secondary national ambient air quality standards ("NAAQS" or "ambient air quality standards") for certain criteria air pollutants. The primary NAAQS are to be adequate to protect the public health, and the secondary NAAQS are to be adequate to protect the public welfare, from any known or anticipated adverse effects associated with the presence of the air pollutant in the ambient air.

22. Section 110 of the Act, 42 U.S.C. § 7410, requires each state to adopt and submit to EPA for approval a State Implementation Plan ("SIP") that provides for the attainment and maintenance of the NAAQS.

23. The Indiana SIP was originally approved by the Administrator on May 31, 1972 (37 Fed. Reg. 10862 (1972)).

24. Under Section 107(d) of the Act, 42 U.S.C. § 7407(d), each state is required to designate those areas within its boundaries where the air quality is better or worse than the NAAQS for each criteria pollutant, or where the air quality cannot be classified due to insufficient data. These designations have been approved by EPA and are located at 40 C.F.R. Part 81. An area that meets the NAAQS for a particular pollutant is classified as an "attainment" area; one that does not is classified as a "non-attainment" area.

25. The Administrator has designated the portion of Lake County, Indiana, where the Amoco Whiting Refinery is located, as nonattainment for ozone and sulfur dioxide. This designation is codified at 40 C.F.R. § 81.315.

Prevention of Significant Deterioration/New Source Review:

26. Part C of Title I of the Act, 42 U.S.C. §§ 7470-7492, sets forth requirements for the prevention of significant deterioration ("PSD") of air quality in those areas designated as attaining the NAAQS standards. These requirements are designed to protect public health and

welfare, to assure that economic growth will occur in a manner consistent with the preservation of existing clean air resources and to assure that any decision to permit increased air pollution is made only after careful evaluation of all the consequences of such a decision and after public participation in the decision-making process. These provisions are referred to herein as the "PSD program".

27. Section 165(a) of the Act, 42 U.S.C. § 7475(a), prohibits the construction and subsequent operation of a major emitting facility in an area designated as attainment unless a PSD permit has been issued. Section 169(1) of the Act, 42 U.S.C. § 7479(1), defines "major emitting facility" as a source with the potential to emit 250 tons per year (tpy) or more of any air pollutant.

28. As set forth at 40 C.F.R. § 52.21(k), the PSD program generally requires a person who wishes to construct or modify a major emitting facility in an attainment area to demonstrate, before construction commences, that construction of the facility will not cause or contribute to air pollution in violation of any ambient air quality standard or any specified incremental amount.

29. As set forth at 40 C.F.R. § 52.21(i), any major emitting source in an attainment area that intends to construct a major modification must first obtain a PSD permit. "Major modification" is defined at 40 C.F.R. § 52.21(b)(2)(i) as meaning any physical change in or change in the method of operation of a major stationary source that would result in a significant net emission increase of any criteria pollutant subject to regulation under the Act. "Significant" is defined at 40 C.F.R. § 52.21(b)(23)(i) in reference to a net emissions increase or the potential of a source to emit any of the following criteria pollutants, at a rate of emissions that would equal or exceed any of the following: for ozone, 40 tons per year of volatile organic compounds (VOCs); for carbon monoxide (CO), 100 tons per year; for nitrogen oxides (NOx), 40 tons per year; for sulfur dioxide (SO_2), 100 tons per year, (hereinafter "criteria pollutants").

30. As set forth at 40 C.F.R. § 52.21(j), a new major stationary source or a major modification in an attainment area shall install and operate best available control technology ("BACT") for each pollutant subject to regulation under the Act that it would have the potential to emit in significant quantities.

31. Section 161 of the Act, 42 U.S.C. § 7471, requires state implementation plans to contain emission limitations and such other measures as may be necessary, as determined under the regulations promulgated pursuant to these provisions, to prevent significant deterioration of air quality in attainment areas.

32. A state may comply with Section 161 of the Act, 42 U.S.C. § 7471, either by being delegated by EPA the authority to enforce the federal PSD regulations set forth at 40 C.F.R. § 52.21, or by having its own PSD regulations approved as part of its SIP by EPA, which must be at least as stringent as those set forth at 40 C.F.R. § 51.166.

33. Part D of Title I of the Act, 42 U.S.C. §§ 7501-7515, sets forth provisions which direct states to include in their SIPs requirements to provide for reasonable progress towards attainment of the NAAQS in nonattainment areas. Section 172(c)(5) of the Act, 42 U.S.C. § 7502(c)(5), provides that these SIPs shall require permits for the construction and operation of new or modified major stationary sources anywhere in the nonattainment area, in accordance with Section 173 of the Act, 42 U.S.C. § 7503, in order to facilitate “reasonable further progress” towards attainment of the NAAQS.

34. Section 173 of Part D of the Act, 42 U.S.C. § 7503, requires that in order to obtain such a permit the source must, among other things: (a) obtain federally enforceable emission offsets at least as great as the new source’s emissions; (b) comply with the lowest achievable emission rate as defined in Section 171(3) of the Act, 42 U.S.C. § 7501(3); and (c) analyze alternative sites, sizes, production processes, and environmental control techniques for the proposed source and demonstrate that the benefits of the proposed source significantly

outweigh the environmental and social costs imposed as a result of its location, construction, or modification.

35. As set forth in 40 C.F.R. § 52.24, no major stationary source shall be constructed or modified in any nonattainment area as designated in 40 C.F.R. Part 81, Subpart C ("nonattainment area") to which any SIP applies, if the emissions from such source will cause or contribute to concentrations of any pollutant for which a NAAQS is exceeded in such area, unless, as of the time of application for a permit for such construction, such plan meets the requirements of Part D, Title I, of the Act.

36. A state may comply with Sections 172 and 173 of the Act by having its own nonattainment new source review regulations approved as part of its SIP by EPA, which must be at least as stringent as those set forth at 40 C.F.R. § 51.165.

Flaring and New Source Performance Standards.

37. Section 111(b)(1)(A) of the CAA, 42 U.S.C. § 7411(b)(1)(A), requires the Administrator of U.S. EPA to publish a list of categories of stationary sources that emit or may emit any air pollutant. The list must include any categories of sources which are determined to cause or significantly contribute to air pollution which may endanger public health or welfare.

38. Section 111(b)(1)(B) of the CAA, 42 U.S.C. § 7411(b)(1)(B), requires the Administrator of U.S. EPA to promulgate regulations establishing federal standards of performance for new sources of air pollutants within each of these categories. "New sources" are defined as stationary sources, the construction or modification of which is commenced after the publication of the regulations or proposed regulations prescribing a standard of performance applicable to such source. 42 U.S.C. § 7411(a)(2).

39. Pursuant to Section 111(b)(1)(A) of the CAA, 42 U.S.C. § 7411(b)(1)(A), U.S. EPA has identified petroleum refineries as one category of stationary sources that cause, or contribute significantly to, air pollution that may reasonably be anticipated to endanger public

health or welfare.

40. Pursuant to Section 111(b)(1)(B) of the CAA, 42 U.S.C. § 7411(b)(1)(B), U.S. EPA promulgated Standards of Performance for New Stationary Sources (commonly referred to as "New Source Performance Standards" or "NSPS") for various industrial categories, including petroleum refineries. NSPS requirements for petroleum refineries are codified at 40 C.F.R. Part 60, Subpart J, §§ 60.100-60.109.

41. The provisions of 40 C.F.R. Part 60, Subpart J, apply to specified "affected facilities," including, inter alia, Claus sulfur recovery plants that have a capacity greater than 20 long tons per day and that commenced construction or modification after October 4, 1976, and all fluid catalytic cracking unit catalyst regenerators and fuel gas combustion devices that commenced construction or modification after June 11, 1973. 40 C.F.R. § 60.100(a),(b).

42. 40 C.F.R. § 60.102(a) prohibits the discharge into the atmosphere from any fluid catalytic cracking unit catalyst regenerator of (1) particulate matter in excess of 1.0 kg/1000 kg (1.0 lb/1000 lb) of coke burn-off in the catalyst regenerator, and (2) gases exhibiting greater than 30 percent opacity, except for one six-minute average opacity reading in any one hour period; except as provided for in 40 C.F.R. § 60.102(b).

43. 40 C.F.R. § 60.103(a) prohibits the discharge into the atmosphere from any catalytic cracking unit catalyst regenerator any gases that contain carbon monoxide ("CO") in excess of 500 ppm by volume (dry basis).

44. Pursuant to 40 C.F.R. § 60.104(b), the owner or operator of each affected fluid catalytic cracking unit catalyst regenerator shall comply with one of the conditions set forth in 40 C.F.R. § 60.104(b)(1), (2), or (3).

45. 40 C.F.R. § 60.104(a)(2) prohibits sulfur recovery plants subject to 40 C.F.R. Part 60, Subpart J with reduction control systems followed by incineration from discharging in excess of 250 ppm by volume (dry basis) of SO_2 at zero percent excess air. 40 C.F.R. § 60.104(a)(2)

prohibits sulfur recovery plants subject to 40 C.F.R. Part 60, Subpart J with reduction control systems not followed by incineration from discharging in excess of 300 ppm by volume of reduced sulfur compounds and in excess of 10 ppm by volume of hydrogen sulfide, each calculated as ppm SO_2 by volume (dry basis) at zero percent excess air.

46. 40 C.F.R. § 60.104(a)(1) prohibits the burning in any fuel gas combustion device any fuel gas that contains hydrogen sulfide in excess of 230 milligrams per dry standard cubic meter, or, stated in terms of grains per dry standard cubic foot, 0.10. The combustion in a flare of process upset gases or fuel gas that is released to the flare as a result of relief valve leakage or other emergency malfunctions is exempt from the emission limit of 40 C.F.R. § 60.104(a)(1).

47. Pursuant to Section 111(b) of the CAA, 42 U.S.C. § 7411(b), U.S. EPA has promulgated general NSPS provisions, codified at 40 C.F.R. Part 60, Subpart A, §§ 60.1-60.19, that apply to owners or operators of any stationary source that contains an "affected facility" subject to regulation under 40 C.F.R. Part 60.

48. 40 C.F.R. § 60.11(d) requires that at all times, including periods of startup, shutdown, and malfunction, owners and operators shall, to the extent practicable, maintain and operate any affected facility including associated air pollution control equipment in a manner consistent with good air pollution control practice for minimizing emissions.

49. Section 111(e) of the CAA, 42 U.S.C. § 7411(e), prohibits the operation of any new source in violation of an NSPS applicable to such source. Thus, a violation of an NSPS is a violation of Section 111(e) of the CAA.

50. Whenever any person has violated, or is in violation of, any requirement or prohibition of any applicable New Source Performance Standard, Section 113(b) of the CAA, 42 U.S.C. § 7413(b), authorizes the United States to commence a civil action for a permanent or temporary injunction, and/or for a civil penalty of up to $25,000 per day for each such violation occurring prior to January 30, 1997, and, pursuant to Section 113(b) of the CAA, 42 U.S.C.

§ 7413(b), Pub. L. 104-134 and 61 Fed. Reg. 69369, up to $27,500 per day for violations occurring on or after January 31, 1997.

Leak Detection and Repair

51. Section 112 of the CAA, 42 U.S.C. § 7412, requires EPA to promulgate emission standards for certain categories of sources of hazardous air pollutants ("National Emission Standards for Hazardous Air Pollutants" or "NESHAPs") Pursuant to Section 112(d) of the CAA, 42 U.S.C. § 7412(d), EPA promulgated national emission standards for equipment leaks (fugitive emission sources). Those regulations are set forth at 40 C.F.R. Parts 61 Subpart J and V, and Part 63 Subparts F (National Emission Standards for Organic Hazardous Air Pollutants from the Synthetic Organic Chemical Manufacturing Industry), H (NESHAP for Equipment Leaks) and CC (NESHAP for Petroleum Refineries). Pursuant to Section 111 of the CAA, 42 U.S.C. § 7411, EPA promulgated regulations set forth at 40 C.F.R Part 60 Subparts VV and GGG.

52. The focus of the LDAR program is the refinery-wide inventory of all possible leaking valves, the regular monitoring of those valves to identify leaks, and the repair of leaks as soon as they are identified.

Indiana SIP

53. Indiana Air Pollution Control Board Rule ("Indiana Rule") 326 IAC 8-4-8 sets forth standards which regulate volatile organic compound leaks ("fugitive emissions") from components within a petroleum refinery. This rule was approved as part of the Federally enforceable SIP for the State of Indiana on March 6, 1992, and became effective on April 6, 1992 (57 Fed. Reg. 8086 (1992)).

Benzene Waste NESHAP

54. The CAA requires EPA to establish emission standards for "hazardous air pollutants" ("HAPs") in accordance with Section 112 of the CAA, 42 U.S.C. § 7412. Benzene is

listed as a HAP under CAA Section 112(b), 42 U.S.C. § 7412(b). Benzene is a naturally occurring constituent of petroleum product and petroleum wastes. It is a known carcinogen and is highly volatile. Benzene emissions can be detected anywhere in a refinery where petroleum product or waste materials are exposed to the ambient air.

55. In March 1990, EPA promulgated national emission standards applicable to benzene-containing wastes. The benzene waste regulations are set forth at 40 C.F.R. Part 61, Subpart FF, (National Emission Standard for Benzene Waste Operations) (the "Benzene Waste NESHAP").

56. Pursuant to the Benzene Waste NESHAP, refineries are required to tabulate the total annual benzene ("TAB") content in their wastewater. If the TAB is over 10 megagrams, the refinery is required to elect a control option that will require the control of all waste streams, or control of certain select waste streams.

57. Petroleum refineries that elect to comply with the control option set forth at 40 C.F.R. § 61.342(c) must manage and treat all facility waste streams with a flow-weighted annual average benzene concentration greater than 10 parts per million (ppm) in accordance with the control standards of 40 C.F.R. §§ 61.343-61.348, except that up to 2 megagrams (approximately 2.2 tons) per year of such waste streams may be chosen for exemption from such requirements. This control option is commonly referred to as the "2 Mg Option".

58. Pursuant to 40 C.F.R. § 61.348(b)(1), owners and operators of petroleum refineries must design and operate each waste management unit comprising the facility's wastewater treatment system in accordance with the applicable control standards specified at 40 C.F.R. §§ 61.343 through 61.347 of the Benzene Waste NESHAP. However, pursuant to 40 C.F.R. § 61.348(b)(2)(ii), such control standards do not apply to any waste management unit within the facility's wastewater treatment system if each waste stream managed or treated within

that waste management unit has a flow-weighted annual average benzene concentration of less than 10 parts per million (ppm) and all waste streams treated or managed within that waste management have a combined total annual benzene quantity of less than 1 megagram (approximately 1.1 tons). The exemption set forth at 40 C.F.R. § 61.348(b)(2)(ii) is commonly referred to as the "1 Mg Limit".

CFC Recycling and Emissions Reduction Regulations

59. Subchapter VI of the CAA, 42 U.S.C. §§ 7671-7671q ("Stratospheric Ozone Protection") is designed to control emissions of certain substances that destroy the stratospheric ozone layer, known as Class I and Class II ozone-depleting substances.

60. Section 608 of Subchapter VI, 42 U.S.C. § 7671g(c)(1), provides that "it shall be unlawful for any person, in the course of maintaining, servicing, repairing, or disposing of an appliance of industrial process refrigeration, to knowingly vent or otherwise release or dispose of any such Class I or Class II substances used as a refrigerant in such appliance (or industrial process refrigeration) in a manner which permits such substance to enter the environment." Section 608, 42 U.S.C. § 7671g ("National Recycling and Emission Reduction Program"), further requires that the EPA promulgate regulations establishing standards and requirements regarding the use and disposal of Class I and Class II ozone-depleting substances.

61. EPA promulgated the regulations required by CAA Section 608, 42 U.S.C. § 7671g, and codified them at 40 C.F.R. Part 82, Subpart F ("Recycling and Emissions Reduction") (hereinafter referred to as the "CFC Recycling and Emissions Reduction Regulations"). The CFC Recycling and Emissions Reduction Regulations are intended to reduce emissions of Class I and Class II ozone-depleting substances into the atmosphere.

62. Pursuant to 40 C.F.R. § 82.156(i)(2), the owner or operator of an industrial process refrigeration appliance (referred to as an "IPR") containing more than fifty pounds of refrigerant must keep the leak rate of that appliance below a 35% annualized leak rate. Where the annualized leak rate from an IPR exceeds 35%, the owner or operator must repair the leak within thirty (30) days (120 days if necessary parts are unavailable or if an industrial process shutdown, as defined by the Subpart F Regulations, is needed to repair the cooling appliance). 40 C.F.R. § 82.156(i)(2); 40 C.F.R. § 82.156(i)(9).

63. Pursuant to 40 C.F.R. § 82.156(i)(3), if leak repairs on the IPR are attempted, the owner or operator must then perform an initial verification test on the IPR at the conclusion of the repairs to determine if the repairs have brought the annualized leak rates to below 35%. A follow-up verification test must be performed within thirty (30) days of the initial verification test. 40 C.F.R. § 82.156(i)(3).

64. Pursuant to 40 C.F.R. § 82.156(i)(3)(ii), if the follow-up verification test indicates that leak repairs to an IPR have not been successfully completed within thirty (30) days, the owner or operator of the cooling appliance must retire, replace, and/or retrofit the cooling appliance in accordance with 40 C.F.R. § 82.156(i)(6).

65. Pursuant to 40 C.F.R. § 82.156(i)(3)(iii), if leak repair on an IPR is attempted but the follow-up verification test reveals that the leak rate is still more than 35%, the owner or operator of the cooling appliance must notify the EPA of the failed follow-up verification test within thirty (30) days, in accordance with 40 C.F.R. § 82.166(n).

66. Pursuant to 40 C.F.R. §§ 82.156(i)(2) and 82.166(n), the owner or operator of an IPR must report to the EPA, *inter alia*, the leak rate of any appliance, the method used to

determine the leak rate, the date a leak rate more than the allowable leak rate was discovered, the location and extent of leaks, the date and type of repair work that has been completed, and if applicable, the reasons why more than thirty (30) days are needed to complete leaks repairs.

67. Pursuant to 40 C.F.R. § 82.156(i)(5), the owner or operator of a comfort cooling appliance containing more than fifty pounds of refrigerant must keep the leak rate of that appliance below a 15% annualized leak rate. Where the annualized leak rate from a comfort cooling appliance exceeds 15%, the owner or operator must repair the leak within thirty (30) days. 40 C.F.R. § 82.156(i)(5); 40 C.F.R. § 82.156(i)(9).

68. Alternatively, within thirty (30) days of discovering that the annualized leak rate of an IPR exceeds 35% or that the annualized leak rate of a comfort cooling appliance exceeds 15%, the owner or operator must develop a one-year plan to retire or retrofit the leaking appliance. 40 C.F.R. § 82.156(i)(6). The owner or operator must complete all work required under the plan within one year of the plan's date. 40 C.F.R. § 82.156(i)(6).

Asbestos NESHAP

69. Pursuant to Section 112 of the CAA, 42 U.S.C. § 7412, Congress designated asbestos as a hazardous air pollutant.

70. Pursuant to Section 112(d) of the CAA, 42 U.S.C. § 7412(d), EPA promulgated the Asbestos NESHAP regulations at 40 C.F.R. Part 61, subpart M. The Asbestos NESHAP includes regulatory requirements governing the emission, handling, and disposal of asbestos during demolition and/or renovation operations in regulated facilities.

71. Pursuant to 40 C.F.R. § 61.145(c)(6)(i), for all regulated asbestos-containing material ("RACM") that has been removed or stripped during a demolition or renovation

operation involving at least a threshold amount of RACM, each owner/operator of the demolition or renovation operation must "[a]dequately wet the material and ensure that it remains wet until collected and contained or treated in preparation for disposal in accordance with 40 C.F.R. § 61.150."

72. Pursuant to 40 C.F.R. § 61.150(a), each owner/operator of a demolition or renovation operation involving at least a threshold amount of RACM must discharge no visible emissions to the outside air during the collection, processing, packaging, or transporting of any asbestos-containing waste material generated by the source or it must use one of the emission control and waste treatment methods specified in 40 C.F.R. §§ 61.150(a)(1) - (a)(4).

Enforcement of the CAA and Implementing Regulations

73. Pursuant to Section 113(b) of the CAA, 42 U.S.C. §7413(b), the United States may commence a civil action for injunctive relief and civil penalties for violations of the CAA, not to exceed $25,000 per day of violation per violation. Pursuant to Section 113(b) of the CAA, 42 U.S.C. § 7413(b) and the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461 note, as amended by the Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701 note; 69 Fed. Reg. 7121 (February 13, 2004), BP Products is subject to civil penalties of up to $27,500 per day for each violation of the CAA and implementing regulations occurring between January 30, 1997 and March 15, 2004, and up to $32,500 per day for each violation occurring after March 15, 2004.

CERCLA/EPCRA Requirements

74. Section 103(a) of CERCLA, 42 U.S.C. § 9603(a), requires a person in charge of a facility to immediately notify the National Response Center of a release of a hazardous substance

from such facility in an amount equal to or greater than the amount determined pursuant to Section 102 of CERCLA, 42 U.S.C. § 9602 (the "reportable quantity").

75. Section 109(c)(1) of CERCLA, 42 U.S.C. § 9609(c)(1), provides that any person who violates the notice requirements of Section 103(a) of CERCLA, 42 U.S.C. § 9603(a), shall be liable to the United States for civil penalties in an amount not to exceed $25,000 per day for each day the violation continues, and in an amount not to exceed $75,000 per day for each day that any second or subsequent violation continues. Pursuant to Pub. L. 104-134 and 61 Fed. Reg. 69369, civil penalties of up to $27,500 per day for the first violation, and $82,500 per day for any second or subsequent violations, may be assessed for violations occurring on or after January 30, 1997.

76. Section 304(a) of EPCRA, 42 U.S.C. § 11004(a), requires the owner and operator of a facility at which a hazardous chemical is produced, used, or stored, to immediately notify the State Emergency Response Commission ("SERC") and the Local Emergency Planning Committee ("LEPC") of certain specified releases of a hazardous or extremely hazardous substance.

77. Section 304(c) of EPCRA, 42 U.S.C. § 11004(c), requires that, as soon as practicable after a release which requires notice under Section 304(a) of EPCRA, 42 U.S.C. § 11004(a), the owner or operator shall provide a written followup emergency notice providing certain specified additional information.

78. Section 325(b)(3) of EPCRA, 42 U.S.C. § 11045(b)(3), provides that any person who violates any requirement of Section 304 of EPCRA, 42 U.S.C. § 11004, shall be liable to the United States for civil penalties in an amount not to exceed $25,000 per day for each day the

violation continues, and in an amount not to exceed $75,000 per day for each day that any second or subsequent violation continues. Pursuant to Pub. L. 104-134 and 61 Fed. Reg. 69369, civil penalties of up to $27,500 per day for the first violation, and $82,500 per day for any second or subsequent violations, may be assessed for violations occurring on or after January 30, 1997.

79. Section 313(a), (b), (c) and (f) of EPCRA, 42 U.S.C. § 11023(a), (b), (c) and (f) requires owners or operators of facilities with 10 or more full-time employees, and that are in Standard Industrial Classification Codes 20 through 39, to submit a toxic chemical release form for each toxic chemical (listed in the regulations at 40 C.F.R. § 372.65) that was manufactured, processed, in a quantity greater than 25,000 pounds during calendar years 1989 and after or otherwise used in a quantity greater than 10,000 pounds during any calendar year (40 C.F.R. 372.25(a) and (b). The toxic chemical release forms for the calendar year are due on or before July 1 of the following year.

80. Pursuant to Section 329(4) of EPCRA, 42 U.S.C. § 11049(4), and 40 C.F.R. § 372.3, a "facility" is "all buildings, equipment, structures, and other stationary items which are located on a single site or on contiguous or adjacent sites and which are owned or operated by the same person (or by any person which controls, is controlled by or under common control with, such person)."

81. Pursuant to Section 313 (b)(1)(C) of EPCRA, 42 U.S.C. § 11023(b)(1)(C), "manufacture" means "to produce, prepare, import, or compound a toxic chemical".

82. The regulation at 40 C.F.R. § 372.3 states that the term manufacture "also applies to a toxic chemical that is produced coincidentally during the manufacture, processing, use or

disposal of another chemical or mixture of chemicals, including a toxic chemical that is separated from that other chemical or mixture of chemicals as a byproduct, and a toxic chemical that remains in that other chemical or mixture of chemicals as an impurity".

83. Section 325(c)(1) of EPCRA, 42 U.S.C. § 11045(c)(1), provides that any person who violates any requirement of Section 312 or 313 of EPCRA, 42 U.S.C. §§ 11022 and 11023, shall be liable to the United States for civil penalties in an amount not to exceed $25,000 for each such violation.

84. Section 325(c)(3) of EPCRA, 42 U.S.C. § 11045(c)(3), provides that each day a violation described in Paragraph (1) continues shall constitute a separate violation.

RCRA Requirements

85. RCRA establishes a comprehensive federal program for the regulation of the generation, storage, transportation, treatment, and disposal of hazardous wastes. Pursuant to its authority under RCRA, U.S. EPA has promulgated regulations at 40 C.F.R. Parts 260-272 which are applicable to facilities and persons that generate, store, treat, transport, and dispose of hazardous waste.

86. Pursuant to Sections 3001 through 3004 of RCRA, 42 U.S.C. §§ 6922-6924, the Administrator of U.S. EPA ("Administrator") promulgated regulations establishing substantive standards governing persons who generate (Section 3002), transport (Section 3003) and who treat, store or dispose of hazardous wastes (Section 3004). Standards for governing the generation, transportation, or hazardous waste treatment, storage or disposal ("TSD") became effective on November 19, 1980 and are found generally at 40 C.F.R. Parts 262-265.

87. Pursuant to Section 3001(a) and (b) of RCRA, 42 U.S.C. § 6921(a) and (b), the

Administrator identified and listed hazardous wastes. Pursuant to this authority, the Administrator has identified two categories of hazardous waste that are subject to regulation under RCRA: 1) wastes that are specifically "listed" as hazardous wastes in the regulations, 40 C.F.R. §§ 261.31-261.33; and 2) wastes that exhibit the characteristic of ignitability, corrosivity, reactivity or toxicity, as defined in 40 C.F.R. §§ 261.21-261.24.

88. Section 3005 of RCRA, 42 U.S.C. § 6925, generally prohibits the operation of any hazardous waste facility except in accordance with a permit. The Administrator has established regulations governing permits which are found at 40 C.F.R. Part 270.

89. The regulations governing the generation of hazardous wastes are found at 40 C.F.R. Part 262.

90. The regulations governing the treatment, storage or disposal ("TSD") of hazardous wastes are found at 40 C.F.R. Parts 264 and 265.

91. Pursuant to Section 3006 of RCRA, 42 U.S.C. § 6926, the Administrator may authorize a state to administer the RCRA hazardous waste management program in lieu of the federal program when he or she deems the state program to be substantially equivalent.

92. The Administrator authorized the State of Indiana to carry out a hazardous waste program in lieu of many, but not all, portions of the federal program on January 31, 1986 (51 Fed. Reg. 3953 (1986)).

93. Pursuant to Section 3008(a)(2) of RCRA, 42 U.S.C. § 6928(a)(2), the United States is authorized to enforce the regulations promulgated by an authorized state, including the State of Indiana.

94. RCRA Section 3008(a), 42 U.S.C. § 6928(a), provides that the Administrator may

commence a civil action for injunctive relief whenever he or she determines that any person is in violation of any of RCRA's hazardous waste management requirements. RCRA Section 3008(g), 42 U.S.C. § 6928(g), provides for the assessment of civil penalties up to $25,000 per violation for each day of each violation.

FIRST CLAIM FOR RELIEF
(CAA PSD/NSR Violations at FCCUs)

95. Paragraphs 1 through 73 are realleged and incorporated by reference as if fully set forth herein.

96. EPA has conducted investigations of one or more of Defendants' petroleum refineries, which included site inspections, review of permitting history and emissions data, and analysis of other relevant information concerning Defendants' construction and operation of their respective facilities. Based on the results of EPA's investigation, information and belief, the United States alleges that Defendants have modified the FCCU's, SRPs, and heaters and boilers, at their respective refineries.

97. Upon information and belief, each modification was a "major modification" within the meaning of 40 C.F.R. § 52.21(b)(2) to Defendants' existing major stationary sources that have or would have resulted in a significant net emissions increase of NOx, SO_2, PM and CO.

98. Since their initial construction or major modification of the Defendants' facilities, Defendants have been in violation of Section 165(a) of the CAA, 42 U.S.C. § 7475(a), and 40 C.F.R. § 52.21, and the corresponding state implementation plans, by failing to undergo PSD/NSR review for their FCCUs, SRPs, and heaters and boilers, by failing to obtain permits, and failing to install the best available control technology for the control of NOx, SO_2, PM, and

CO emissions.

99. Unless restrained by an Order of the Court, these violations of the CAA and the implementing regulations will continue.

100. As provided in 42 U.S.C. § 7413(b), Defendants' violations, as set forth above, subject it to injunctive relief and civil penalties of up to $25,000 per day for each violation of the Act prior to January 31, 1997, and pursuant to Section 113(b) of the CAA, 42 U.S.C. § 7413(b), Pub. L. 104-134 and 61 Fed. Reg. 69369, BP is liable for a civil penalty of up to $27,500 per day per violation for violations occurring on or after January 31, 1997.

SECOND CLAIM FOR RELIEF
(CAA/NSPS Violations at FCCUs)

101. Paragraphs 1 through 73 are realleged and incorporated by reference as if fully set forth herein.

102. EPA has conducted investigations of one or more of Defendants' petroleum refineries, which included site inspections, review of permitting history and emissions data, and analysis of other relevant information concerning Defendants' construction and operation of their respective facilities obtained from Defendants. The United States alleges the following based on the results of EPA's investigation, information and belief:

103. 40 C.F.R. § 60.102(a) prohibits the discharge into the atmosphere from any fluid catalytic cracking unit catalyst regenerator of (1) particulate matter in excess of 1.0 kg/1000 kg (1.0 lb/1000 lb) of coke burn-off in the catalyst regenerator, and (2) gases exhibiting greater than 30 percent opacity, except for one six-minute average opacity reading in any one hour period; except as provided for in 40 C.F.R. § 60.102(b).

104. 40 C.F.R. § 60.103(a) prohibits the discharge into the atmosphere from any

catalytic cracking unit catalyst regenerator any gases that contain carbon monoxide ("CO") in excess of 500 ppm by volume (dry basis).

105. Pursuant to 40 C.F.R. § 60.104(b), the owner or operator of each affected fluid catalytic cracking unit catalyst regenerator shall comply with one of the standards for sulfur oxides set forth in 40 C.F.R. § 60.104(1), (2) or (3).

106. Based upon information and belief, Defendants have violated 40 C.F.R. §§ 60.102(a), 60.103(a) and/or 60.104(b), and thus Section 111 of the CAA, at one or more of their FCCU catalyst regenerators, by not complying with the emissions standards set forth in those sections.

107. Unless restrained by an order of the Court, these violations of the CAA and the implementing regulations will continue.

108. Pursuant to Section 113(b) of the CAA, 42 U.S.C. § 7413(b), for each violation Defendants are subject to injunctive relief and civil penalties of up to $25,000 per day for violations occurring prior to January 30, 1997, and, pursuant to Section 113(b) of the CAA, 42 U.S.C. § 7413(b), Pub. L. 104-134 and 61 Fed. Reg. 69360, BP is liable for a civil penalty of up to $27,500 per day per violation for violations occurring on or after January 30, 1997.

THIRD CLAIM FOR RELIEF - CAA
(Failure to Conduct Performance Evaluation of CEMS on Tail Gas Unit)
(Whiting facility)

109. Paragraphs 1 through 73 are hereby realleged and incorporated by reference as if fully set forth herein.

110. The regulation at 40 C.F.R. § 60.13(c) requires that owners or operators of an affected facility conduct a performance evaluation of continuous emission monitoring systems

("CEMS") during any performance test required under 40 C.F.R. § 60.8 or within 30 days thereafter in accordance with the applicable performance specification in appendix B of 40 C.F.R. Part 60.

111. On October 2, 1990, EPA promulgated a rule requiring Claus sulfur recovery plants in Petroleum Refineries subject to 40 C.F.R. Part 60 to install and operate CEMS. (55 Fed. Reg. 40171 (1990)). Sources affected by this rulemaking were given one year, or until October 2, 1991, to install and operate hydrogen sulfide CEMS and/or reduced sulfur CEMS.

112. On October 2, 1990, EPA promulgated 40 C.F.R. § 60.105(a)(6) requiring Claus sulfur recovery plants with reduction control systems not followed by incineration to conduct performance evaluations under § 60.13(c) by using Performance Specification 5 in addition to other methods.

113. Since 1981, Amoco had operated a reduced sulfur CEMS on the stack of the tail gas unit of the Claus sulfur recovery plant at the refinery which was not followed by incineration.

114. Amoco did not conduct the required performance evaluation on the reduced sulfur CEMS located on the tail gas unit by the effective date of the regulation codified at 40 C.F.R. § 60.105(a)(6).

115. Amoco failed to conduct a performance evaluation of the reduced sulfur CEMS located on the tail gas unit in violation of the regulations at 40 C.F.R. § 60.13(c) and 40 C.F.R. § 60.105(a)(6).

116. Pursuant to Section 113(b) of the CAA, 42 U.S.C. § 7413(b), Amoco is subject to a civil penalty of not more than $25,000 per day for each day that Amoco failed to conduct a

performance evaluation of the reduced sulfur CEMS located on the tail gas unit as required by 40 C.F.R. § 60.13(c) and 40 C.F.R. § 60.105(a)(6), and, pursuant to Section 113(b) of the CAA, 42 U.S.C. § 7413(b), Pub. L. 104-134 and 61 Fed. Reg. 69360, Amoco is liable for a civil penalty of up to $27,500 per day per violation for violations occurring on or after January 30, 1997.

FOURTH CLAIM FOR RELIEF - CAA
(Failure to Have A CEMS on Tail Gas Incinerator)
(Whiting facility)

117. The allegations in Paragraphs 1 through 73 are hereby realleged and incorporated by reference as if fully set forth herein.

118. 40 C.F.R. § 60.105(a)(5), requires that sulfur dioxide CEMS shall be installed, calibrated, maintained and operated by owners and operators of Claus sulfur recovery plants with oxidation control systems or reduction control systems followed by incineration.

119. The regulation at 40 C.F.R. § 60.13(g) requires that when the effluent from one affected facility is released to the atmosphere through more than one emission point, the owner or operator shall install an applicable CEMS on each separate effluent unless the installation of fewer systems is approved by the Administrator.

120. Amoco has a tail gas incinerator which has the capability to combust tail gases from the Claus sulfur recovery plant and which emits sulfur dioxide.

121. Amoco's tail gas incinerator does not have a sulfur dioxide CEMS.

122. Amoco has failed to monitor all emission points as required by the regulation at 40 C.F.R. § 60.13(g) by failing to install a sulfur dioxide CEMS on the tail gas incinerator in violation of the regulation at 40 C.F.R. § 60.13(b) and § 60.105(a)(5).

123. Pursuant to Section 113(b) of the CAA, 42 U.S.C. § 7413(b), Amoco is subject to

a civil penalty of not more than $25,000 per day for each day that Amoco failed to comply with the CAA due to its failure to install a sulfur dioxide CEMS on the tail gas incinerator, and, pursuant to Section 113(b) of the CAA, 42 U.S.C. § 7413(b), Pub. L. 104-134 and 61 Fed. Reg. 69360, Amoco is liable for a civil penalty of up to $27,500 per day per violation for violations occurring on or after January 30, 1997.

124. Unless enjoined, Amoco will continue to violate the CAA and the provisions of 40 C.F.R. §§ 60.13(b) and (g) and § 60.105(a)(5) by failing to install a sulfur dioxide CEMS on the tail gas incinerator and failing to monitor the effluent emitted from the tail gas incinerator into the atmosphere.

FIFTH CLAIM FOR RELIEF - CAA
(Failure to Conduct Performance Evaluation of CEM Required to Be Installed on the Tail Gas Incinerator)
(Whiting facility)

125. The allegations in Paragraphs 1 through 73 are hereby realleged and incorporated by reference as if fully set forth herein.

126. The regulation at 40 C.F.R. § 60.13(c) requires that owners or operators of an affected facility conduct a performance evaluation of the CEMS during any performance test required under 40 C.F.R. § 60.8 or within 30 days thereafter in accordance with the applicable performance specification in appendix B of 40 C.F.R. Part 60.

127. The regulation at 40 C.F.R. § 60.13(b) requires that all CEMS shall be installed and operational prior to conducting a performance test on a subject source under 40 C.F.R. § 60.8.

128. Amoco did not conduct a performance evaluation on the sulfur dioxide CEMS that was required to be installed on the tail gas incinerator.

129. Amoco failed to conduct a performance evaluation of the sulfur dioxide CEMS required to be installed on the tail gas incinerator in violation of the regulation at 40 C.F.R. § 60.13(c).

130. Pursuant to Section 113(b) of the CAA, 42 U.S.C. § 7413(b), Amoco is subject to a civil penalty of not more than $25,000 per day for each day that Amoco violated the CAA and the regulations at 40 C.F.R. § 60.13(c), by failing to conduct a performance evaluation of the sulfur dioxide CEMS that was required to be installed on the tail gas incinerator and, pursuant to Section 113(b) of the CAA, 42 U.S.C. § 7413(b), Pub. L. 104-134, and 61 Fed. Reg. 69360, Amoco is liable for a civil penalty of up to $27,500 per day per violation for violations occurring on or after January 30, 1997.

131. Unless enjoined, Amoco will continue to violate the CAA and the provisions of 40 C.F.R. § 60.13(c) by failing to conduct a performance evaluation of the sulfur dioxide CEMS on the tail gas incinerator.

SIXTH CLAIM FOR RELIEF - CAA
(Failure to Submit Excess Emissions Reports For Emissions from Tail Gas Unit)
(Whiting facility)

132. The allegations in Paragraphs 1 through 73 are hereby realleged and incorporated by reference as if fully set forth herein.

133. The regulation at 40 C.F.R. § 60.7(c) requires that each owner or operator required to install a CEMS shall submit an excess emissions and monitoring systems performance report ("excess emission report") to the Administrator semiannually, except in certain situations outlined in 40 C.F.R. § 60.7(c), which would require more frequent reporting.

134. The regulation at 40 C.F.R. § 60.7(c)(4) requires that when no excess emissions

have occurred or the continuous monitoring system(s) have not been inoperative, repaired, or adjusted, such information shall be stated in the report.

135. Pursuant to 40 C.F.R. § 60.7(c), Amoco was required to submit an excess emission report summarizing data from the reduced sulfur CEMS on the tail gas unit for the period ending December 31, 1991, by January 30, 1992. Amoco failed to submit such report until October 5, 1992.

136. Amoco's failure to submit an excess emission report summarizing data from the reduced sulfur CEMS on the tail gas unit until October 5, 1992 is a violation of the regulation at 40 C.F.R. § 60.7(c).

137. Pursuant to Section 113(b) of the CAA, 42 U.S.C. § 7413(b), Amoco is subject to a civil penalty of not more than $25,000 per day for each day that Amoco violated the CAA and the regulation at 40 C.F.R. § 60.7(c) for its delay in submitting an excess emission report for the reduced sulfur CEMS on the tail gas unit and, pursuant to Section 113(b) of the CAA, 42 U.S.C. § 7413(b), Pub. L. 104-134 and 61 Fed. Reg. 69360, Amoco is liable for a civil penalty of up to $27,500 per day per violation for violations occurring on or after January 30, 1997.

SEVENTH CLAIM FOR RELIEF - CAA
(Failure to Submit Excess Emissions Reports for Emissions from Tail Gas Incinerator)
(Whiting facility)

138. The allegations in Paragraphs 1 through 73 are hereby realleged and incorporated by reference as if fully set forth herein.

139. Amoco has failed to submit any excess emission reports for the sulfur dioxide CEMS that was required to be installed on the tail gas incinerator.

140. Amoco's failure to submit any excess emission reports relating to a sulfur dioxide

CEMS that was required to be installed on the tail gas incinerator is a violation of 40 C.F.R. § 60.7(c).

141. Unless enjoined, Amoco will continue to violate the CAA and the provisions of 40 C.F.R. § 60.7(c) by failing to submit excess emission reports for the sulfur dioxide CEMS required to be installed on the tail gas incinerator.

142. Pursuant to Section 113(b) of the CAA, 42 U.S.C. § 7413(b), Amoco is subject to a civil penalty of not more than $25,000 per day for each day that Amoco violated the CAA and the regulation at 40 C.F.R. § 60.7(c) by failing to submit excess emission reports for the sulfur dioxide CEMS required to be installed on the tail gas incinerator and, pursuant to Section 113(b) of the CAA, 42 U.S.C. § 7413(b), Pub. L. 104-134 and 61 Fed. Reg. 69360, Amoco is liable for a civil penalty of up to $27,500 per day per violation for violations occurring on or after January 30, 1997.

EIGHTH CLAIM FOR RELIEF - CAA
(Failure to Continuously Monitor and Record Emissions from Fuel Gas Combustion Devices)
(Whiting facility)

143. The allegations in Paragraphs 1 through 73 are hereby realleged and incorporated by reference as if fully set forth herein.

144. The regulation at 40 C.F.R. § 60.105(a)(3) sets forth provisions which require the owner or operator of fuel gas combustion devices subject to 40 C.F.R. § 60.104(a)(1) to continuously monitor and record the concentration by volume of sulfur dioxide emissions into the atmosphere.

145. The regulation at 40 C.F.R. § 60.105(a)(4) provides that, in place of the sulfur dioxide CEMS required by 40 C.F.R. § 60.105(a)(3), an owner or operator may install an

instrument for continuously monitoring and recording the concentration of hydrogen sulfide ("H_2S") in fuel gases before being burned in any subject fuel gas combustion device.

146. Amoco has four hydrogen sulfide continuous monitors installed on the fuel lines that feed its NSPS subject fuel gas combustion devices at its facility.

147. Amoco failed to continuously monitor and record the concentration of H_2S released from its fuel gas combustion devices.

148. Amoco's failure to continuously monitor and record the concentration of hydrogen sulfide in fuel gases combusted in the fuel gas combustion devices is a violation of the regulation at 40 C.F.R. § 60.105(a).

149. Pursuant to Section 113(b) of the CAA, 42 U.S.C. § 7413(b), Amoco is subject to a civil penalty of not more than $25,000 per day for each day that Amoco violated the CAA and the regulation at 40 C.F.R. § 60.105(a) by failing to continuously monitor and record the concentration of hydrogen sulfide in fuel gases combusted in its fuel gas combustion devices and, pursuant to Section 113(b) of the CAA, 42 U.S.C. § 7413(b), Pub. L. 104-134 and 61 Fed. Reg. 69360, Amoco is liable for a civil penalty of up to $27,500 per day per violation for violations occurring on or after January 30, 1997.

NINTH CLAIM FOR RELIEF - CAA
(CAA/NSPS: 40 C.F.R. § 60.104(a)(2))
(Discharging Gases from the SRP in violation of 40 C.F.R. § 60.104(a)(2))
(Whiting facility)

150. The allegations in Paragraphs 1 through 73 are hereby realleged and incorporated by reference as if fully set forth herein.

151. The regulation at 40 C.F.R. § 60.104(a)(2) prohibits the discharge of any gases into the atmosphere from any Claus sulfur recovery plant in excess of i) 250 ppm by volume of

sulfur dioxide (on a dry basis at zero percent excess air) for Claus sulfur recovery plants with oxidation control systems or reduction control systems followed by incineration; or ii) 300 ppm by volume of reduced sulfur compounds and 10 ppm by volume of hydrogen sulfide (each calculated as ppm SO_2 by volume on a dry basis at zero percent excess air) for Claus sulfur recovery plants with reduction control systems not followed by incineration.

152. The regulation at 40 C.F.R. § 60.8(c) states in part that emissions in excess of the level of the applicable emission limit during periods of startup, shutdown and malfunction shall not be considered a violation of the applicable emission limit unless otherwise specified in the applicable standard.

153. Since 1981 Amoco has operated a Claus sulfur recovery plant with two routes to the atmosphere for its emissions. One route treats emissions in a Stretford unit, which is a reduction control device not followed by incineration. Emissions through this route are in the form of reduced sulfur compounds, including hydrogen sulfide. The other route oxidizes emissions from the Claus sulfur recovery plant in an incinerator. Emissions from this route are in the form of sulfur dioxide.

154. Since at least 1993, Amoco has, on occasion, emitted gases from the Claus sulfur recovery plant during periods other than startups, shutdowns and malfunctions, that were in excess of the applicable emission limitation in 40 C.F.R. § 60.104(a)(2).

155. Amoco's emissions from the Claus sulfur recovery plant in excess of the applicable emission limitation in 40 C.F.R. § 60.104(a)(2) during periods other than startup, shutdown and malfunction constitute a violation of 40 C.F.R. § 60.104(a)(2).

156. Pursuant to Section 113(b) of the CAA, 42 U.S.C. § 7413(b), for each violation

referred to in the preceding Paragraph, Amoco is subject to injunctive relief and civil penalties of up to $25,000 per day for violations occurring prior to January 30, 1997, and, pursuant to Section 113(b) of the CAA, 42 U.S.C. § 7413(b), Pub. L. 104-134 and 61 Fed. Reg. 69360, Amoco is liable for a civil penalty of up to $27,500 per day per violation for violations occurring on or after January 30, 1997.

TENTH CLAIM FOR RELIEF - CAA
(Failure to Operate and Maintain Equipment In A Manner Consistent with Good Air Pollution Control Practice)
(Whiting facility)

157. The allegations in Paragraphs 1 through 73 are hereby realleged and incorporated by reference as if fully set forth herein.

158. The regulation at 40 C.F.R. § 60.11(d) requires at all times, including periods of startup, shutdown and malfunction, that owners and operators operate and maintain any affected facility, including associated air pollution control equipment in a manner consistent with good air pollution control practice for minimizing emissions.

159. Amoco has failed to maintain its Claus sulfur recovery plant and its associated air pollution control equipment, in a manner consistent with good air pollution control practice by shutting down the tail gas unit while continuing to operate all or part of the Claus sulfur recovery plant, resulting in emissions that exceed the regulatory standard.

160. On numerous occasions since at least 1993, Amoco did not at all times, including periods of startup, shutdown, and malfunction, maintain and operate, to the extent practicable, its Claus sulfur recovery plaint, including associated air pollution control equipment, in a manner consistent with good air pollution control practice for minimizing emissions, as required by 40 C.F.R. § 60.11(d) and Section 111(e) of the CAA, 42 U.S.C. § 7411(e).

161. Pursuant to Section 113(b) of the CAA, 42 U.S.C. § 7413(b), for each violation referred to in the preceding Paragraph, Amoco is subject to injunctive relief and civil penalties of up to $25,000 per day for violations occurring prior to January 30, 1997, and, pursuant to Section 113(b) of the CAA, 42 U.S.C. § 7413(b), Pub. L. 104-134 and 61 Fed. Reg. 69360, Amoco is liable for a civil penalty of up to $27,500 per day per violation for violations occurring on or after January 30, 1997.

ELEVENTH CLAIM FOR RELIEF
(Incomplete Excess Emissions Reports (EERs)
(Whiting facility)

162. The allegations in Paragraphs 1 through 73 are hereby realleged and incorporated by reference as if fully set forth herein.

163. The regulation at 40 C.F.R. § 60.7(c) requires that each owner or operator required to install a CEMS to submit an excess emissions and monitoring systems performance report (excess emissions report) to the Administrator semiannually, except in certain situations outlined in 40 C.F.R. § 60.7(c), which would require more frequent reporting.

164. The regulations at 40 C.F.R. § 60.7(c)(1) and (2) require that the excess emissions reports include, among other things, the date and time of commencement and completion of each time period of excess emissions; the magnitude of excess emissions; specific identification of each period of excess emissions that occurred during startups, shutdowns and malfunctions of the affected facility; the nature and cause of any malfunctions (if known); and the corrective action taken or preventative measures adopted.

165. Based on information provided by Amoco, there have been numerous incidents since at least 1993 that have resulted in emissions exceedances from the Claus sulfur recovery

plant that have been omitted from its excess emissions reports.

166. Amoco's failure to include the information required by 40 C.F.R. § 60.7(c)(1) and (2) for all incidents resulting in excess emissions from the affected facility, i.e., the Claus sulfur recovery plant, is a violation of the regulations at 40 C.F.R. § 60.7(c)(1) and (2).

167. Pursuant to Section 113(b) of the CAA, 42 U.S.C. § 7413(b), for each violation referred to in the preceding Paragraph, Amoco is subject to injunctive relief and civil penalties of up to $25,000 per day for violations occurring prior to January 30, 1997, and, pursuant to Section 113(b) of the CAA, 42 U.S.C. § 7413(b), Pub. L. 104-134 and 61 Fed. Reg. 69360, Amoco is liable for a civil penalty of up to $27,500 per day per violation for violations occurring on or after January 30, 1997.

TWELFTH CLAIM FOR RELIEF - CAA
(Circumvention)
(Whiting facility)

168. The allegations in Paragraphs 1 through 73 are hereby realleged and incorporated by reference as if fully set forth herein.

169. The regulation at 40 C.F.R. § 60.12 prohibits any owner or operator subject to 40 C.F.R. Part 60 from building, erecting, installing or using any article, machine, equipment or process, the use of which conceals an emission which would otherwise constitute a violation of an applicable standard.

170. Amoco is the owner and operator of a Claus sulfur recovery plant located at its Whiting refinery which is subject to 40 C.F.R. Part 60, Subpart J.

171. Amoco's Claus sulfur recovery plant is equipped with two separate routes to the atmosphere for its emissions. One route emits offgases from the Claus sulfur recovery plant that

are treated by a Stretford unit and released through a stack equipped with a continuous emission monitoring system. The other route emits offgases from the Claus sulfur recovery plant through a tail gas incinerator that is not equipped with a continuous emission monitoring system on its stack.

172. Since at least 1993, Amoco has, on occasion, emitted gases from the Claus sulfur recovery plant through the tail gas incinerator that are in violation of the applicable emission standard found in 40 C.F.R. Part 60, Subpart J.

173. Amoco has failed to report these excess emissions to U.S. EPA and has frequently stated in its excess emission reports during the time periods of these releases that there are "no excursions".

174. By utilizing the unmonitored tail gas incinerator as an emission point for the Claus sulfur recovery plant, Amoco has concealed emissions from the U.S. EPA that constitute violations of the applicable emission standard. This is a violation of 40 C.F.R. § 60.12.

175. Pursuant to Section 113(b) of the CAA, 42 U.S.C. § 7413(b), for each violation referred to in the preceding Paragraph, Amoco is subject to injunctive relief and civil penalties of up to $25,000 per day for violations occurring prior to January 30, 1997, and, pursuant to Section 113(b) of the CAA, 42 U.S.C. § 7413(b), Pub. L. 104-134 and 61 Fed. Reg. 69360, Amoco is liable for a civil penalty of up to $27,500 per day per violation for violations occurring on or after January 30, 1997.

176. Unless enjoined, Amoco will continue to violate the CAA and the provisions of 40 C.F.R. § 60.12.

THIRTEENTH CLAIM FOR RELIEF
(CAA/NSPS: 40 C.F.R. § 60.104(a)(2))
Discharging Gases from the SRP in violation of 40 C.F.R. § 60.104(a)(2)

177. The allegations in Paragraphs 1 through 73 are hereby realleged and incorporated by reference as if fully set forth herein.

178. Each Defendant is the "owner or operator", within the meaning of Section 111(a)(5) of the CAA, 42 U.S.C. § 7411(a)(5), and 40 C.F.R. § 60.2, of one or more facilities referred to as a sulfur recovery plant ("SRP"), located at each of their refineries.

179. The SRP is a "Claus sulfur recovery plant" as defined in 40 C.F.R. § 60.101(i). The SRP is also a "stationary source" within the meaning of Sections 111(a)(3) and 302(z) of the CAA, 42 U.S.C. §§ 7411(a)(3) and 7602(z).

180. Each SRP at the following refineries has a capacity of more than 20 long tons of sulfur per day: Cherry Point, Carson, Texas City, Toledo, Whiting, and Yorktown

181. Each SRP referred to in Paragraph 156 is an "affected facility" within the meaning of 40 C.F.R. §§ 60.2 and 60.100(a), and a "new source" within the meaning of Section 111(a)(2) of the CAA, 42 U.S.C. § 7411(a)(2).

182. Each SRP referred to in Paragraph 156 is subject to the General Provisions of the NSPS, 40 C.F.R. Part 60, Subpart A, and to the Standards of Performance for Petroleum Refineries, 40 C.F.R. Part 60, Subpart J.

183. Each SRP referred to in Paragraph 156 is subject to the emission limitation set forth in 40 C.F.R. § 60.104(a)(2)(i).

184. On numerous occasions since at least 1995, Defendants have discharged into the atmosphere gases containing in excess of (1) 250 ppm by volume (dry basis) of sulfur dioxide at

zero percent excess air, or (2) 300 ppm by volume of reduced sulfur compounds, in violation of 40 C.F.R. § 60.104(a)(2) and Section 111(e) of the CAA, 42 U.S.C. § 7411(e).

185. Unless restrained by an order of the Court, these violations of the CAA and the implementing regulations will continue.

186. Pursuant to Section 113(b) of the CAA, 42 U.S.C. § 7413(b), for each violation referred to in the preceding Paragraph, Defendants are subject to injunctive relief and civil penalties of up to $25,000 per day for violations occurring prior to January 30, 1997, and, pursuant to Section 113(b) of the CAA, 42 U.S.C. § 7413(b), Pub. L. 104-134 and 61 Fed. Reg. 69360, Defendants are liable for a civil penalty of up to $27,500 per day per violation for violations occurring on or after January 30, 1997.

FOURTEENTH CLAIM FOR RELIEF
(CAA/NSPS: 40 C.F.R. § 60.11(d))
Failing to Operate and Maintain the SRP
in a Manner Consistent with Good Air Pollution Control Practice

187. The allegations in Paragraphs 1 through 73 are hereby realleged and incorporated by reference as if fully set forth herein.

188. On numerous occasions since 1995, Defendants' refinery flares at their respective refineries have emitted unpermitted quantities of SO_2, a criteria pollutant, under circumstances that did not represent good air pollution control practices, in violation of 40 C.F.R. § 60.11(d) and for combustion of refinery fuel gas in violation of Subpart J, 40 C.F.R. §§ 60.104, et. seq.

189. Unless restrained by an order of the Court, these violations of the Act and the implementing regulations will continue.

190. Pursuant to Section 113(b) of the CAA, 42 U.S.C. § 7413(b), for each violation referred to in the preceding Paragraph, Defendants are subject to injunctive relief and civil

penalties of up to $25,000 per day for violations occurring prior to January 30, 1997, and, pursuant to Section 113(b) of the CAA, 42 U.S.C. § 7413(b), Pub. L. 104-134 and 61 Fed. Reg. 69360, Defendants are liable for a civil penalty of up to $27,500 per day per violation for violations occurring on or after January 30, 1997.

FIFTEENTH CLAIM FOR RELIEF - CAA
(Indiana SIP – Leak Detection and Repair)
(Whiting facility)

191. The allegations in Paragraphs 1 through 73 are hereby realleged and incorporated by reference as if fully set forth herein.

192. Indiana Rule 326 IAC 8-4-8(q)(2), as approved by U.S. EPA, requires that no owner or operator of a petroleum refinery shall install or operate a valve at the end of a pipe or line containing volatile organic compounds ("VOCs") unless the pipe or line is sealed with a second valve, blind flange, plug or cap.

193. For a period of time until at least November 16, 1992, Amoco had numerous open-ended pipes or lines in VOC service which did not have a second valve, blind flange, plug or cap, as required by Indiana Rule 326 IAC 8-4-8(q)(2).

194. Amoco's failure to seal pipes or lines in VOC service with a second valve, blind flange, plug or cap, is a violation of Indiana Rule 326 IAC 8-4-8(q)(2) and Section 110(a) of the CAA, 42 U.S.C. § 7410(a).

195. Pursuant to Section 113(b) of the CAA, 42 U.S.C. § 7413(b), Amoco is subject to a civil penalty of not more than $25,000 per day for each day that Amoco violated Section 110(a) of the CAA, 42 U.S.C. § 7410(a) and 326 IAC 8-4-8(q)(2) by failing to properly seal pipes or lines in VOC service, and, pursuant to Section 113(b) of the CAA, 42 U.S.C. § 7413(b),

Pub. L. 104-134 and 61 Fed. Reg. 69360, Amoco is liable for a civil penalty of up to $27,500 per day per violation for violations occurring on or after January 30, 1997.

SIXTEENTH CLAIM FOR RELIEF - CAA
(Indiana SIP – Leak Detection and Repair)
(Whiting Facility)

196. The allegations in Paragraphs 1 through 73 are hereby realleged and incorporated by reference as if fully set forth herein.

197. The provisions of Indiana Rule 326 IAC 8-4-8(q)(3), as approved by U.S. EPA, require that pipeline valves and pressure relief valves in gaseous VOC service be marked in some manner that will be readily obvious to both refinery personnel and staff.

198. For a period of time, beginning from at least November 16, 1992, Amoco had numerous valves in VOC service which were not adequately marked in a readily obvious manner in violation of the requirements of Indiana Rule 326 IAC 8-4-8(q)(3).

199. Pursuant to Section 113(b) of the CAA, 42 U.S.C. § 7413(b), Amoco is subject to a civil penalty of not more than $25,000 per day for each day that Amoco violated Section 110(a) of the CAA, 42 U.S.C. § 7410(a) and 326 IAC 8-4-8(q)(3) by failing to properly mark numerous valves in VOC service, and, pursuant to Section 113(b) of the CAA, 42 U.S.C. § 7413(b), Pub. L. 104-134 and 61 Fed. Reg. 69360, Amoco is liable for a civil penalty of up to $27,500 per day per violation for violations occurring on or after January 30, 1997.

SEVENTEENTH CLAIM FOR RELIEF
(Leak Detection and Repair Requirements)

200. The allegations in Paragraphs 1 through 73 are realleged and incorporated by reference as if fully set forth herein.

201. Defendants are required under 40 C.F.R. Part 60 Subpart GGG, to comply with

standards set forth at 40 C.F.R. § 60.592, which in turn references standards set forth at 40 C.F.R. §§ 60.482-1 to 60.482-10, and alternative standards set forth at 40 C.F.R. §§ 60.483-1 to 60.483-2, for certain of its refinery equipment in VOC service, constructed or modified after January 4, 1983,

202. Pursuant to 40 C.F.R. § 60.483-2(b)(1), an owner or operator of subject VOC valves must initially comply with the leak detection monitoring and repair requirements set forth in 40 C.F.R. § 60.482-7, including the use of Standard Method 21 to monitor for such leaks.

203. Pursuant to 40 C.F.R. Part 61 Subpart J, Defendants are required to comply with the requirements set forth in 40 C.F.R. Part 61, Subpart V, for certain specified equipment in benzene service.

204. On numerous occasions since 1995, Defendants failed to accurately monitor the subject VOC valves and other components at their nine respective refineries as required by Standard Method 21, to report the VOC valves and other components that were leaking, and to repair all leaking VOC valves and other components in a timely manner.

205. Defendants' acts or omissions referred to in the preceding Paragraphs constitute violations of the NSPS and Benzene Waste NESHAP.

206. Unless restrained by an order of the Court, these violations of the Act and the implementing regulations will continue.

207. As provided in 42 U.S.C. § 7413(b), Defendants' violations, as set forth above, subject it to injunctive relief and civil penalties of up to $25,000 per day for each violation of the Act prior to January 30, 1997, and, pursuant to Section 113(b) of the CAA, 42 U.S.C. § 7413(b), Pub. L. 104-134 and 61 Fed. Reg. 69360, BP is liable for a civil penalty of up to $27,500 per day per violation for violations occurring on or after January 30, 1997.

EIGHTEENTH CLAIM FOR RELIEF
(Benzene Waste NESHAP)

208. The allegations in Paragraphs 1 through 73 are hereby realleged and incorporated by reference as if fully set forth herein.

209. At all times relevant to this Complaint, Defendants have elected to comply with identified benzene waste management and treatment options set forth in 40 C.F.R. § 61.342 for its benzene waste streams at each of its refineries.

210. Pursuant to 40 C.F.R. § 61.342, the benzene quantity for wastes must be equal to or less than 2.0 megagrams or 6.0 megagrams per year as defined for the applicable option identified, as selected by the refinery.

211. Based on information and belief, the benzene quantity for Defendants' described and defined wastes exceeded one or more of the compliance options set forth in 40 C.F.R. § 61.342, in violation of the benzene waste regulations and the Act.

212. Unless restrained by an order of the Court, these violations of the Act and the implementing regulations will continue.

213. As provided in 42 U.S.C. § 7413(b), Defendants' violations, as set forth above, subject it to injunctive relief and civil penalties of up to $25,000 per day for each violation of the Act prior to January 30, 1997, and, pursuant to Section 113(b) of the CAA, 42 U.S.C. § 7413(b), Pub. L. 104-134 and 61 Fed. Reg. 69360, BP is liable for a civil penalty of up to $27,500 per day per violation for violations occurring on or after January 30, 1997.

NINETEENTH CLAIM FOR RELIEF
(CERCLA)

214. The allegations in Paragraphs 1 through 19 and 74 through 84 are hereby

realleged and incorporated by reference as if fully set forth herein.

215. Section 103(a) of CERCLA, 42 U.S.C. § 9603(a), requires a person in charge of a facility to immediately notify the National Response Center of a release of a hazardous substance from such facility in an amount equal to or greater than the amount determined pursuant to Section 102 of CERCLA, 42 U.S.C. § 9602 (the "reportable quantity").

216. Upon information and belief, on one or more occasions, Defendants failed to immediately notify the National Response Center of releases from their respective refineries of hazardous substances in an amount equal to or greater than the reportable quantity for those substances.

217. Upon information and belief, the acts or omissions referred to in the preceding Paragraph constitute violations of Section 103(a) of CERCLA, 42 U.S.C. § 9603.

218. Pursuant to Section 109(c)(1) of CERCLA, 42 U.S.C. § 9609(c)(1), Defendants are liable for civil penalties in an amount not to exceed $25,000 per day for each day the violation continues for each such violation occurring prior to January 30, 1997, and pursuant to Section 109(c)(1) of CERCLA, 42 U.S.C. § 9609(c)(1), Pub.L. 104-134 and 61 Fed. Reg. 69360, civil penalties of up to $27,500 per day for each such violation occurring on or after January 30, 1997; and in an amount not to exceed $75,000 per day for each day that any second or subsequent violation continues for each such violation occurring prior to January 30, 1997, and pursuant to Section 109(c)(1) of CERCLA, 42 U.S.C. § 9609(c)(1), Pub.L. 104-134 and 61 Fed. Reg. 69360, civil penalties of up to $82,500 per day for each such violation occurring on or after January 30, 1997.

TWENTIETH CLAIM FOR RELIEF
(EPCRA)

219. The allegations in Paragraphs 1 through 19 and 76 through 84 are hereby realleged and incorporated by reference as if fully set forth herein.

220. Section 304(a) of EPCRA, 42 U.S.C. § 11004(a), requires the owner and operator of a facility at which a hazardous chemical is produced, used, or stored, to immediately notify the State Emergency Response Commission ("SERC" - State Authority) and the Local Emergency Planning Committee ("LEPC" - Local Authority) of certain specified releases of a hazardous or extremely hazardous substance.

221. Section 304(c) of EPCRA, 42 U.S.C. § 11004(c), requires that, as soon as practicable after a release which requires notice under Section 304(a) of EPCRA, 42 U.S.C. § 11004(a), the owner or operator shall provide a written followup emergency notice providing certain specified additional information.

222. Upon information and belief, on one or more occasions, Defendants failed to immediately notify the SERC (State Authority) of a release of a hazardous or extremely hazardous substance as required by Section 304(a) of EPCRA, 42 U.S.C. § 11004(a).

223. Upon information and belief, on one or more occasions, Defendants failed to immediately notify the LEPC (Local Authority) of a release of a hazardous or extremely hazardous substance as required by Section 304(a) of EPCRA, 42 U.S.C. § 11004(a).

224. Upon information and belief, on one or more occasions, Defendants failed to provide a written follow-up emergency notice to the SERC (State Authority) as soon as practicable after a release which requires notice under Section 304(a) of EPCRA, 42 U.S.C. § 11004(a), in accordance with the requirements of Section 304(c) of EPCRA, 42 U.S.C.

§ 11004(c).

225. Upon information and belief, on one or more occasions, Defendants failed to provide a written follow-up emergency notice to the LEPC (Local Authority) as soon as practicable after a release which requires notice under Section 304(a) of EPCRA, 42 U.S.C. § 11004(a), in accordance with the requirements of Section 304(c) of EPCRA, 42 U.S.C. § 11004(c).

226. Upon information and belief, the acts or omissions referred to in the preceding Paragraphs constitute violations of Section 304 of EPCRA, 42 U.S.C. § 11004.

227. Pursuant to Section 325(b)(3) of EPCRA, 42 U.S.C. § 11045(b)(3), Defendants are liable for civil penalties in an amount not to exceed $25,000 per day for each day the violation continues for each such violation occurring prior to January 30, 1997, and pursuant to Section 325(b)(3) of EPCRA, 42 U.S.C. § 11045(b)(3), Pub.L. 104-134 and 61 Fed. Reg. 69360, civil penalties of up to $27,500 per day for each such violation occurring on or after January 30, 1997; and in an amount not to exceed $75,000 per day for each day that any second or subsequent violation continues for each such violation occurring prior to January 30, 1997, and pursuant to Section 325(b)(3) of EPCRA, 42 U.S.C. § 11045(b)(3), Pub.L. 104-134 and 61 Fed. Reg. 69360, civil penalties of up to $82,500 per day for each such violation occurring on or after January 30, 1997.

TWENTY-FIRST CLAIM FOR RELIEF (EPCRA)
(Whiting facility)

228. The allegations in Paragraphs 1 through 19 and 74 through 84 are hereby realleged and incorporated by reference as if fully set forth herein.

229. Amoco's facility has "10 or more""full-time employees" as defined by 40 C.F.R.

§ 372.3.

230. Amoco's facility is covered by Standard Industrial Classification Code 2911, which falls within Standard Industrial Classification Codes 20 through 39.

231. Pursuant to 40 C.F.R. § 372.25, the established reporting threshold for a toxic chemical, identified and listed under 40 C.F.R. § 372.65, which is manufactured was 25,000 pounds for the 1991 calendar year.

232. During the calendar year 1991, Amoco processed Ammonia, a chemical identified in EPCRA and listed at 40 C.F.R. § 372.65 with "CAS No. 7664-41-7", in a quantity of 570,000 pounds.

233. Amoco was required to submit to the Administrator of the U.S. EPA and the State of Indiana a toxic chemical release form ("Form R") for Ammonia on or before July 1, 1992.

234. Amoco failed to submit a Form R for Ammonia to the Administrator of U.S. EPA and the State of Indiana until December 3, 1992.

235. Amoco's failure to timely submit a Form R for Ammonia is a violation of Section 313 of EPCRA, 42 U.S.C. § 11023.

236. Pursuant to Section 325(c)(1) of EPCRA, 42 U.S.C. § 11045, Amoco is subject to a civil penalty in an amount not to exceed $25,000 for violating Section 11023 of EPCRA.

237. Pursuant to Section 325(c)(3) of EPCRA, 42 U.S.C. § 11045, each day that Amoco failed to timely submit a Form R constitutes a separate violation.

TWENTY-SECOND CLAIM FOR RELIEF --RCRA
(Waste Pile)
(Whiting facility)

238. The allegations in Paragraphs 1 through 19 and 85 through 94 are hereby

realleged and incorporated by reference as if fully set forth herein.

239. Amoco generates spent lead oxide catalyst known as “spent Bender catalyst”, which is a hazardous waste, as that term is defined at 40 C.F.R. § 261.3. The spent Bender catalyst exhibits the characteristic of toxicity for lead and is a hazardous waste pursuant to 40 C.F.R. §§ 261.3 and 261.24 which bears the U.S. EPA waste code designation D008.

240. From some unknown time after November 19, 1980 until at least July, 1989, Amoco placed the spent Bender catalyst on the ground in a waste pile at the Amoco facility.

241. The regulations at 40 C.F.R. Part 270 and 329 IAC Article 3.1 set out the requirements for the hazardous waste permit program within the State of Indiana.

242. Pursuant to 40 C.F.R. § 270.1 and 329 IAC 3.1-13-1 the treatment, storage or disposal of any hazardous waste without a permit is prohibited.

243. Pursuant to 329 IAC 3.1-13-1 the State of Indiana has incorporated by reference, unless otherwise noted, the provisions of 40 C.F.R. Part 270.

244. Pursuant to 40 C.F.R. § 270.1, Amoco submitted to U.S. EPA Part A of its permit application to treat store or dispose of hazardous wastes at the refinery on November 18, 1980 and subsequently amended Part A of the application on March 17, 1982.

245. 40 C.F.R. § 270.13(h) requires the owner or operator of a hazardous waste facility to identify the location of all past, present or intended treatment, storage or disposal areas at the facility.

246. Amoco did not identify the past, present or intended treatment, storage or disposal of spent Bender catalyst in the waste pile as required pursuant to 40 C.F.R. § 270.13(h).

247. In response to an information request issued by U. S. EPA pursuant to Section

3007 of RCRA, 42 U.S.C. § 6927, Amoco identified, on July 28, 1994, the existence of the waste pile at which it had treated, stored or disposed of the spent Bender catalyst.

248. Pursuant to 329 IAC 3.1-9-1, the State of Indiana has incorporated by reference, unless otherwise noted, the provisions of 40 C.F.R. Part 264.

249. The regulations at 40 C.F.R. Part 264, Subpart L, set out the requirements for the operation of waste piles as hazardous waste management units within the State of Indiana.

250. The waste pile containing the spent Bender catalyst did not comply with any of the regulatory or technical requirements for hazardous waste piles required by 40 C.F.R. Part 264, Subpart L.

251. The regulations as 40 C.F.R. Part 264, Subpart G, as adopted at 329 IAC 3.1-9-1, set forth the requirements for closure of hazardous waste management facilities, such as waste piles, within the State of Indiana.

252. Amoco has violated and continues to violate the requirements of 40 C.F.R. Part 264, Subpart G, by its failure to properly close the waste pile in which it had treated, stored or disposed of spent Bender catalyst, a hazardous waste pursuant to 40 C.F.R. §§ 261.3 and 261.24. Specifically, Amoco has violated and continues to violate 40 C.F.R. Subpart G, without limitation, by failing to:

a. submit a closure plan as required by 40 C.F.R. § 264.112;

b. implement closure as required by 40 C.F.R. § 264.113;

c. certify the completion of closure as required by 40 C.F.R. § 264.115; and

d. establish a post-closure plan as required by 40 C.F.R. § 264.118.

253. Pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), Amoco is subject to a

civil penalty of not more than $25,000 per day for each day prior to January 30, 1997 that Amoco failed to comply with RCRA due to its failure to properly close the waste pile and for violating the requirements of 40 C.F.R. Part 264, Subpart G. Pursuant to Pub. L. 104-134 and 61 Fed. Reg. 69,360, civil penalties of up to $27,500 per day for each violation may be assessed for violations occurring on or after January 30, 1997.

TWENTY-THIRD CLAIM FOR RELIEF - RCRA
(Waste Pile)
(Whiting facility)

254. The allegations in Paragraphs 1 through 19 and 85 through 94 are hereby realleged and incorporated by reference as if fully set forth herein.

255. Pursuant to the 40 C.F.R. § 270.1(c) owners and operators of hazardous waste management units are required to have a permit during the active life (including the closure period) of the unit, and, for waste pile units that received waste after July 26, 1982, a post-closure permit unless they can demonstrate closure by removal as provided under Section 270.1(d)(5) and (6).

256. Amoco has not obtained a post-closure care permit for the waste pile or demonstrated closure by removal as required under Section 270.1(d)(5) and (6) in violation of 40 C.F.R. § 270.1(c).

257. Amoco has violated, and continues to violate RCRA and the implementing regulations each day that it fails to obtain a post-closure care permit for the waste pile or demonstrate closure by removal as required under Section 270.1(d)(5) and (6).

258. Pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), Amoco is subject to a civil penalty of not more than $25,000 per day for each day prior to January 30, 1997 that

Amoco violated RCRA by failing to obtain a post closure permit or demonstrate closure by removal for the waste pile. Pursuant to Pub. L. 104-134 and 61 Fed. Reg. 69,360, civil penalties of up to $27,500 per day for each violation may be assessed for violations occurring on or after January 30, 1997.

TWENTY-FOURTH CLAIM FOR RELIEF - RCRA
(Waste Pile)
(Whiting facility)

259. The allegations in Paragraphs 1 through 19 and 85 through 94 are hereby realleged and incorporated by reference as if fully set forth herein.

260. The regulations at 40 C.F.R. Part 264, Subpart H, set forth the financial responsibility requirements for owners and operators of hazardous waste management facilities, such as waste piles.

261. Amoco violated the requirements of 40 C.F.R. Part 264, Subpart H, by failing to establish financial responsibility for the spent Bender catalyst waste pile. Specifically, Amoco violated 40 C.F.R. Subpart H by, without limitation, failing to:

a. develop cost estimates for closure of the waste pile as required by 40 C.F.R. § 264.142;

b. establish financial assurances for closure of the waste pile as required by 40 C.F.R. § 264.143;

c. develop cost estimates for post-closure care of the waste pile as required by 40 C.F.R. § 264.144;

d. establish financial assurances for post-closure care of the waste pile as required by 40 C.F.R. § 264.145; and

e. establish liability coverage for sudden and non-sudden accidental occurrences arising from operation of the waste pile as required by 40 C.F.R. § 264.147.

262. Pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), Amoco is subject to a civil penalty of not more than $25,000 per day for each day prior to January 30, 1997 that Amoco failed to comply with RCRA due to its failure to establish financial responsibility for the waste pile and for violating the requirements of 40 C.F.R. Part 264, Subpart H. Pursuant to Pub. L. 104-134 and 61 Fed. Reg. 69,360, civil penalties of up to $27,500 per day for each violation may be assessed for violations occurring on or after January 30, 1997.

TWENTY-FIFTH CLAIM FOR RELIEF - RCRA
(Spent Treating Clay)
(Whiting facility)

263. The allegations in Paragraphs 1 through 19 and 85 through 94 are hereby realleged and incorporated by reference as if fully set forth herein.

264. Pursuant to 329 IAC 3.1-7-1, the State of Indiana has incorporated by reference, unless otherwise noted, the provisions of 40 C.F.R. Part 262.

265. The regulations at 40 C.F.R. § 262.11 require a person who generates solid waste, as that term is defined at 40 C.F.R. § 261.2, to make a determination if the waste is hazardous.

266. In order to properly determine if a solid waste is a characteristic hazardous waste the generator must take a representative sample of the waste, as that term is defined at 40 C.F.R. § 260.10, to determine if the waste exhibits one or more of the characteristics set out at 40 C.F.R. Part 261, Subpart C.

267. Amoco generates a spent treating clay waste from its Number 4C Treating Plant

which is a solid waste as that term is defined at 40 C.F.R. § 261.2.

268. The spent treating clay is generated in "drums" and is then transferred to "roll-off" boxes for transport to an off-site disposal facility.

269. Amoco has treated the spent treating clay taken from a "drums" as both hazardous waste and non-hazardous waste.

270. Amoco has failed to make an adequate hazardous waste determination for the spent treating clay waste in violation of 40 C.F.R. § 262.11, due to the fact that it has failed to take a representative sample, as that term is defined at 40 C.F.R. § 260.10, of the spent treating clay waste.

271. From at least March 27, 1990 until present, Amoco has failed to make an adequate waste determination of the spent treating clay waste in violation of 40 C.F.R. § 262.11. Therefore, Amoco had violated 40 C.F.R. § 262.11 and 329 IAC 3.1-7-2-1.

272. Pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), Amoco is subject to a civil penalty of not more than $25,000 per day for each day prior to January 30, 1997 that Amoco failed to comply with RCRA due to its failure to comply with the provisions of 40 C.F.R. § 262.11 and 329 IAC 3.1-7-1, with regard to the spent treating clay waste. Pursuant to Pub. L. 104-134 and 61 Fed. Reg. 69,360, civil penalties of up to $27,500 per day for each violation may be assessed for violations occurring on or after January 30, 1997.

273. Unless enjoined, Amoco will continue to violate RCRA and the provisions of 40 C.F.R. § 262.11 and 329 IAC 3.1-7-1, by failing to make an adequate waste determination with regard to the spent treating clay waste.

SUPPLEMENTAL TWENTY-SIXTH CLAIM FOR RELIEF - CAA (Benzene Waste NESHAP)

(40 C.F.R. 61.342(c): Failure to comply with 2 Mg Control Option)

(Texas City Refinery)

274. The allegations in Paragraphs 1 through 73 are hereby re-alleged and incorporated by reference as if fully set forth herein.

275. BP Products' Texas City Refinery is an existing "stationary source" that emits hazardous air pollutants within the meaning of 40 C.F.R. § 61.02.

276. BP Products' Texas City Refinery is a "facility" within the meaning of 40 C.F.R. § 61.341.

277. At all times relevant hereto, the Texas City Refinery has been subject to the 2 Mg compliance option set forth at 40 C.F.R. § 61.342(c).

278. During calendar years 2001 through 2007, more than 2 megagrams (approximately 2.2 tons) per year of facility waste streams with a flow-weighted annual average benzene concentration greater than 10 parts per million (ppm) were not controlled in accordance with 40 C.F.R. §§ 61.343-61.348 at BP Products' Texas City Refinery as required by 40 C.F.R. § 61.342(c)(3)(ii).

279. These acts or omissions constitute violations of 40 C.F.R. §§ 61.05(c) and 61.342(c)(3)(ii) of the Benzene Waste NESHAP, and CAA Section 112, 42 U.S.C. § 7412.

280. Unless restrained by an order of this Court, BP Products' Texas City Refinery will continue to violate the Benzene Waste NESHAP and the CAA.

281. Pursuant to Section 113(b) of the CAA, 42 U.S.C. § 7413(b) and the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461 note, as amended by the Debt

Collection Improvement Act of 1996, 31 U.S.C. § 3701 note; 69 Fed. Reg. 7121 (February 13, 2004), BP Products is subject to civil penalties of up to $27,500 per day for each violation of the CAA and Benzene Waste NESHAP occurring between January 30, 1997 and March 15, 2004, up to $32,500 per day for each violation occurring between March 16, 2004 and January 11, 2009, and up to $37,500 per day for each violation occurring after January 11, 2009.

SUPPLEMENTAL TWENTY-SEVENTH CLAIM FOR RELIEF - CAA (Benzene Waste NESHAP)

(40 C.F.R. 61.348(b)(2): Failure to comply with 1 Mg Limit)

(Texas City Refinery)

282. The allegations in Paragraphs 1 through 73 and Paragraphs 275 through 277 are hereby re-alleged and incorporated by reference as if fully set forth herein.

283. At all times relevant hereto, BP Products operated a wastewater treatment system at its Texas City Refinery that was composed of various waste management units. BP Products aggregated and/or mixed individual benzene-containing waste streams from throughout the Texas City Refinery within this wastewater treatment system in order to treat and/or manage such waste streams.

284. Upon information and belief, during calendar years 2004 through 2006, waste management units within the wastewater treatment system at BP Products' Texas City Refinery, including portions of the Flume and Lift Stations 1, 2, 3, and 21, were not operated in accordance with applicable control standards specified at 40 C.F.R. §§ 61.343 through 61.347 of the Benzene Waste NESHAP. Nevertheless, these waste management units were used to treat and/or manage benzene-containing waste streams with a total annual benzene quantity of greater than 1 megagram (approximately 1.1 tons) per year.

285. These acts or omissions constitute violations of 40 C.F.R. §§ 61.05(c) and 61.348(b)(2)(ii) of the Benzene Waste NESHAP, and CAA Section 112, 42 U.S.C. § 7412.

286. Unless restrained by an order of this Court, BP Products' Texas City Refinery will continue to violate the Benzene Waste NESHAP and the CAA.

287. Pursuant to Section 113(b) of the CAA, 42 U.S.C. § 7413(b) and the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461 note, as amended by the Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701 note; 69 Fed. Reg. 7121 (February 13, 2004), BP Products is subject to civil penalties of up to $27,500 per day for each violation of the CAA and Benzene Waste NESHAP occurring between January 30, 1997 and March 15, 2004, up to $32,500 per day for each violation occurring between March 16, 2004 and January 11, 2009, and up to $37,500 per day for each violation occurring after January 11, 2009.

SUPPLEMENTAL TWENTY-EIGHTH CLAIM FOR RELIEF - CAA (CFC Recycling and Emissions Reduction Regulations)

(40 C.F.R. 82.156(i)(2)/82.156(i)(9) - Failure to Repair Leaks: IPR)

(Texas City Refinery)

288. The allegations in Paragraphs 1 through 73 are hereby re-alleged and incorporated by reference as if fully set forth herein.

289. At all times relevant hereto, BP Products owned and operated an IPR known as the "Hydrogen Recovery Unit Chiller" located at the Hydrogen Recovery Unit within the Resid Hydrotreating Unit at the Texas City Refinery. The Hydrogen Recovery Unit Chiller is an "appliance" within the meaning of 40 C.F.R. § 82.152. The Hydrogen Recovery Unit Chiller normally contains more than 50 pounds of HCFC-22, a "refrigerant" within the meaning of 40 C.F.R. § 82.152 and a Class II ozone-depleting substance.

290. At all times relevant hereto, BP Products owned and operated various comfort cooling appliances normally containing more than 50 pounds of HCFC-22 at its Texas City Refinery (hereinafter referred to as "regulated comfort cooling appliances"). These regulated comfort cooling appliances are "appliances" within the meaning of 40 C.F.R. § 82.152.

291. At all times relevant hereto, the Hydrogen Recovery Unit Chiller and the regulated comfort cooling appliances at BP Products' Texas City Refinery have been subject to the CFC Recycling and Emissions Reduction Regulations.

292. During calendar years 2003-2005, the annualized leak rate from BP Products' Hydrogen Recovery Unit Chiller at the Texas City Refinery exceeded 35% on one or more occasions. BP Products failed to successfully repair these leaks within 30 days of discovering them without otherwise developing a one-year plan to retire or retrofit the IPR.

293. These acts or omissions constitute violations of 40 C.F.R. §§ 82.156(i)(2) and 82.156(i)(9) of the CFC Recycling and Emissions Reduction Regulations.

294. Unless restrained by an order of this Court, BP Products' Texas City Refinery will continue to violate the CFC Recycling and Emissions Reduction Regulations and the CAA.

295. Pursuant to Section 113(b) of the CAA, 42 U.S.C. § 7413(b) and the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461 note, as amended by the Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701 note; 69 Fed. Reg. 7121 (February 13, 2004), BP Products is subject to civil penalties of up to $27,500 per day for each violation of the CAA and CFC Recycling and Emissions Reduction Regulations occurring between January 30, 1997 and March 15, 2004, up to $32,500 per day for each violation occurring between March 16, 2004 and January 11, 2009, and up to $37,500 per day for each violation occurring after January

11, 2009.

SUPPLEMENTAL TWENTY-NINTH CLAIM FOR RELIEF - CAA (CFC Recycling and Emissions Reduction Regulations)

(40 C.F.R. 82.156(i)(5)/82.156(i)(9) - Failure to Repair Leaks: Comfort Cooling Appliances)

(Texas City Refinery)

296. The allegations in Paragraphs 1 through 73 and Paragraphs 290 through 291 are hereby re-alleged and incorporated by reference as if fully set forth herein.

297. During calendar years 2003-2005, at one or more of BP Products' regulated comfort cooling appliances at the Texas City Refinery, the annualized leak rate exceeded 15%. BP Products failed to successfully repair these leaks within 30 days of discovering them without otherwise developing a one-year plan to retire or retrofit these regulated comfort cooling appliances.

298. These acts or omissions constitute violations of 40 C.F.R. §§ 82.156(i)(5) and 82.156(i)(9) of the CFC Recycling and Emissions Reduction Regulations.

299. Unless restrained by an order of this Court, BP Products' Texas City Refinery will continue to violate the CFC Recycling and Emissions Reduction Regulations and the CAA.

300. Pursuant to Section 113(b) of the CAA, 42 U.S.C. § 7413(b) and the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461 note, as amended by the Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701 note; 69 Fed. Reg. 7121 (February 13, 2004), BP Products is subject to civil penalties of up to $27,500 per day for each violation of the CAA and CFC Recycling and Emissions Reduction Regulations occurring between January 30, 1997 and March 15, 2004, up to $32,500 per day for each violation occurring between March 16,

2004 and January 11, 2009, and up to $37,500 per day for each violation occurring after January 11, 2009.

SUPPLEMENTAL THIRTIETH CLAIM FOR RELIEF -
CAA (CFC Recycling and Emissions Reduction Regulations)

(40 C.F.R. 82.156(i)(3) - Failure to Conduct Initial Verification Testing)

(Texas City Refinery)

301. The allegations in Paragraphs 1 through 73 and Paragraphs 289 through 292 are hereby re-alleged and incorporated by reference as if fully set forth herein.

302. During calendar years 2003-2005, BP Products failed to perform one or more initial verification tests following leak repair attempts on the Hydrogen Recovery Unit Chiller at the Texas City Refinery. Alternatively, during calendar years 2003-2005, BP Products failed to perform one or more adequate initial verification tests following leak repair attempts on the Hydrogen Recovery Unit Chiller at the Texas City Refinery.

303. These acts or omissions constitute violations of 40 C.F.R. § 82.156(i)(3) of the CFC Recycling and Emissions Reduction Regulations.

304. Unless restrained by an order of this Court, BP Products' Texas City Refinery will continue to violate the CFC Recycling and Emissions Reduction Regulations and the CAA.

305. Pursuant to Section 113(b) of the CAA, 42 U.S.C. § 7413(b) and the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461 note, as amended by the Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701 note; 69 Fed. Reg. 7121 (February 13, 2004), BP Products is subject to civil penalties of up to $27,500 per day for each violation of the CAA and CFC Recycling and Emissions Reduction Regulations occurring between January 30, 1997 and March 15, 2004, up to $32,500 per day for each violation occurring between March 16,

2004 and January 11, 2009, and up to $37,500 per day for each violation occurring after January 11, 2009.

SUPPLEMENTAL THIRTY-FIRST CLAIM FOR RELIEF - CAA (CFC Recycling and Emissions Reduction Regulations)

(40 C.F.R. 82.156(i)(3) - Failure to Conduct Follow-up Verification Testing)

(Texas City Refinery)

306. The allegations in Paragraphs 1 through 73 and Paragraphs 289 through 292 are hereby re-alleged and incorporated by reference as if fully set forth herein.

307. During calendar years 2003-2005, BP Products failed to perform one or more follow-up verification tests following leak repair attempts on the Hydrogen Recovery Unit Chiller at the Texas City Refinery. Alternatively, during calendar years 2003-2005, BP Products failed to perform one or more adequate follow-up verification tests following leak repair attempts on the Hydrogen Recovery Unit Chiller at the Texas City Refinery.

308. These acts or omissions constitute violations of 40 C.F.R. § 82.156(i)(3) of the CFC Recycling and Emissions Reduction Regulations.

309. Unless restrained by an order of this Court, BP Products' Texas City Refinery will continue to violate the CFC Recycling and Emissions Reduction Regulations and the CAA.

310. Pursuant to Section 113(b) of the CAA, 42 U.S.C. § 7413(b) and the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461 note, as amended by the Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701 note; 69 Fed. Reg. 7121 (February 13, 2004), BP Products is subject to civil penalties of up to $27,500 per day for each violation of the CAA and CFC Recycling and Emissions Reduction Regulations occurring between January 30, 1997 and March 15, 2004, up to $32,500 per day for each violation occurring between March 16,

2004 and January 11, 2009, and up to $37,500 per day for each violation occurring after January 11, 2009.

SUPPLEMENTAL THIRTY-SECOND CLAIM FOR RELIEF - CAA (CFC Recycling and Emissions Reduction Regulations)

(40 C.F.R. 82.156(i)(2)/82.166(n) - Failure to Notify EPA of Need for Additional Time to Repair Leaks on IPR)

(Texas City Refinery)

311. The allegations in Paragraphs 1 through 73 and Paragraphs 289 through 292 are hereby re-alleged and incorporated by reference as if fully set forth herein.

312. During calendar years 2003-2005, on one or more occasions, BP Products failed to notify EPA, in accordance with 40 C.F.R. §§ 82.156(i)(2) and 82.166(n)(1), that more than thirty (30) days were needed to complete leaks repairs on the Hydrogen Recovery Unit Chiller at the Texas City Refinery.

313. These acts or omissions constitute violations of 40 C.F.R. §§ 82.156(i)(2) and 82.166(n)(1) of the CFC Recycling and Emissions Reduction Regulations.

314. Unless restrained by an order of this Court, BP Products' Texas City Refinery will continue to violate the CFC Recycling and Emissions Reduction Regulations and the CAA.

315. Pursuant to Section 113(b) of the CAA, 42 U.S.C. § 7413(b) and the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461 note, as amended by the Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701 note; 69 Fed. Reg. 7121 (February 13, 2004), BP Products is subject to civil penalties of up to $27,500 per day for each violation of the CAA and CFC Recycling and Emissions Reduction Regulations occurring between January 30, 1997 and March 15, 2004, up to $32,500 per day for each violation occurring between March 16,

2004 and January 11, 2009, and up to $37,500 per day for each violation occurring after January 11, 2009.

SUPPLEMENTAL THIRTY-THIRD CLAIM FOR RELIEF - CAA (CFC Recycling and Emissions Reduction Regulations)

(40 C.F.R. 82.156(i)(3)(iii)/82.166(n) - Failure to Report Failed Follow-up Verification Test To EPA)

(Texas City Refinery)

316. The allegations in Paragraphs 1 through 73 and Paragraphs 289 through 292 are hereby re-alleged and incorporated by reference as if fully set forth herein.

317. During calendar years 2003-2005, on one or more occasions, BP Products failed to notify EPA within thirty days that the Hydrogen Recovery Unit Chiller at the Texas City Refinery failed one or more follow-up verification tests.

318. These acts or omissions constitute violations of 40 C.F.R. §§ 82.156(i)(3)(iii) and 82.166(n) of the CFC Recycling and Emissions Reduction Regulations.

319. Unless restrained by an order of this Court, BP Products' Texas City Refinery will continue to violate the CFC Recycling and Emissions Reduction Regulations and the CAA.

320. Pursuant to Section 113(b) of the CAA, 42 U.S.C. § 7413(b) and the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461 note, as amended by the Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701 note; 69 Fed. Reg. 7121 (February 13, 2004), BP Products is subject to civil penalties of up to $27,500 per day for each violation of the CAA and CFC Recycling and Emissions Reduction Regulations occurring between January 30, 1997 and March 15, 2004, up to $32,500 per day for each violation occurring between March 16, 2004 and January 11, 2009, and up to $37,500 per day for each violation occurring after January

11, 2009.

SUPPLEMENTAL THIRTY-FOURTH CLAIM FOR RELIEF - CAA (CFC Recycling and Emissions Reduction Regulations)

(40 C.F.R. 82.156(i)(6) - Failure to Submit Retirement or Retrofit Plans)

(Texas City Refinery)

321. The allegations in Paragraphs 1 through 73, Paragraphs 289 through 292, and Paragraph 297 are hereby re-alleged and incorporated by reference as if fully set forth herein.

322. During calendar years 2003-2005, on one or more occasions, BP Products failed to develop a one-year plan to retire or retrofit the leaking Hydrogen Recovery Unit Chiller and/or leaking regulated comfort cooling appliances at the Texas City Refinery.

323. These acts or omissions constitute violations of 40 C.F.R. § 82.156(i)(6) of the CFC Recycling and Emissions Reduction Regulations.

324. Unless restrained by an order of this Court, BP Products' Texas City Refinery will continue to violate the CFC Recycling and Emissions Reduction Regulations and the CAA.

325. Pursuant to Section 113(b) of the CAA, 42 U.S.C. § 7413(b) and the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461 note, as amended by the Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701 note; 69 Fed. Reg. 7121 (February 13, 2004), BP Products is subject to civil penalties of up to $27,500 per day for each violation of the CAA and CFC Recycling and Emissions Reduction Regulations occurring between January 30, 1997 and March 15, 2004, up to $32,500 per day for each violation occurring between March 16, 2004 and January 11, 2009, and up to $37,500 per day for each violation occurring after January 11, 2009.

SUPPLEMENTAL THIRTY-FIFTH CLAIM FOR RELIEF -
CAA (CFC Recycling and Emissions Reduction Regulations)

(40 C.F.R. 82.156(i)(6)/82.156(i)(3)(ii) - Failure to Retire, Retrofit, and/or Replace Cooling Appliances Within One Year)

(Texas City Refinery)

326. The allegations in Paragraphs 1 through 73, Paragraphs 289 through 292, and Paragraph 297 are hereby re-alleged and incorporated by reference as if fully set forth herein.

327. During calendar years 2003-2005, on one or more occasions, BP Products failed to retire, replace, and/or retrofit the leaking Hydrogen Recovery Unit Chiller at the Texas City Refinery within one year after follow-up verification testing indicated that leak repairs to the Hydrogen Recovery Unit Chiller were not successfully completed. Alternatively, during calendar years 2003-2005, on one or more occasions, BP Products failed to retire, replace, and/or retrofit the leaking Hydrogen Recovery Unit Chiller at the Texas City Refinery within one year of discovering an annualized leak rate greater than 35%.

328. During calendar years 2003-2005, on one or more occasions, BP Products failed to retire, replace, and/or retrofit the leaking regulated comfort cooling appliances at the Texas City Refinery within one year of discovering an annualized leak rate greater than 15%.

329. These acts or omissions constitute violations of 40 C.F.R. §§ 82.156(i)(6) and 82.156(i)(3)(ii) of the CFC Recycling and Emissions Reduction Regulations.

330. Unless restrained by an order of this Court, BP Products' Texas City Refinery will continue to violate the CFC Recycling and Emissions Reduction Regulations and the CAA.

331. Pursuant to Section 113(b) of the CAA, 42 U.S.C. § 7413(b) and the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461 note, as amended by the Debt

Collection Improvement Act of 1996, 31 U.S.C. § 3701 note; 69 Fed. Reg. 7121 (February 13, 2004), BP Products is subject to civil penalties of up to $27,500 per day for each violation of the CAA and CFC Recycling and Emissions Reduction Regulations occurring between January 30, 1997 and March 15, 2004, up to $32,500 per day for each violation occurring between March 16, 2004 and January 11, 2009, and up to $37,500 per day for each violation occurring after January 11, 2009.

SUPPLEMENTAL THIRTY-SIXTH CLAIM FOR RELIEF - CAA (Asbestos NESHAP)

(40 C.F.R. 61.145(c)(6)(i) - Failure to Adequately Wet ACM: Isomerization Unit)

(Texas City Refinery)

332. The allegations in Paragraphs 1 through 73 are hereby re-alleged and incorporated by reference as if fully set forth herein.

333. BP Products' Texas City Refinery is "stationary source" that emits hazardous air pollutants within the meaning of 40 C.F.R. § 61.02.

334. BP Products' Texas City Refinery is a "facility" within the meaning of 40 C.F.R. § 61.141.

335. At all times relevant hereto, BP Products was an "owner or operator of a demolition or renovation activity" within the meaning of 40 C.F.R. § 61.141.

336. In March 2005, an explosion occurred at the Isomerization Unit located within the Texas City Refinery. As a result of this sudden and unexpected event, "emergency renovation operations" within the meaning of 40 C.F.R. § 61.141 were needed to address RACM at the Isomerization Unit.

337. At least a threshold amount of RACM , as defined by 40 C.F.R. § 61.145(a), was

stripped, removed, dislodged, cut, drilled, and/or disturbed during the emergency renovation operations at the Isomerization Unit.

338. However, from approximately April 1 through May 4, 2005, BP Products failed to adequately wet the RACM at the Isomerization Unit and failed to ensure that it remained wet until collected and contained or treated in preparation for disposal in accordance with 40 C.F.R. § 61.150.

339. These acts or omissions constitute violations of 40 C.F.R. § 61.145(c)(6)(i) of the Asbestos NESHAP.

340. Unless restrained by an order of this Court, BP Products' Texas City Refinery will continue to violate the Asbestos NESHAP and the CAA.

341. Pursuant to Section 113(b) of the CAA, 42 U.S.C. § 7413(b) and the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461 note, as amended by the Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701 note; 69 Fed. Reg. 7121 (February 13, 2004), BP Products is subject to civil penalties of up to $27,500 per day for each violation of the CAA and Asbestos NESHAP occurring between January 30, 1997 and March 15, 2004, up to $32,500 per day for each violation occurring between March 16, 2004 and January 11, 2009, and up to $37,500 per day for each violation occurring after January 11, 2009.

SUPPLEMENTAL THIRTY-SEVENTH CLAIM FOR RELIEF - CAA (Asbestos NESHAP)

(40 C.F.R. 61.145(c)(6)(i) - Failure to Adequately Wet ACM: Bullpen Area)

(Texas City Refinery)

342. The allegations in Paragraphs 1 through 73 and Paragraphs 333 through 335 are hereby re-alleged and incorporated by reference as if fully set forth herein.

343. At all times relevant hereto, BP Products conducted "demolition or renovation activity" within the meaning of 40 C.F.R. § 61.141 throughout the Texas City Refinery.

344. At least a threshold amount of RACM, as defined by 40 C.F.R. § 61.145(a), was stripped, removed, dislodged, cut, drilled, and/or disturbed during these demolition or renovation activities.

345. RACM from these demolition or renovation activities was collected in several forty-cubic-yard dumpsters located in a central area of the Texas City Refinery known as the "Bullpen." The Bullpen is located on the west side of East 1st Street near the intersection of East 1st and Avenue H within the Texas City Refinery.

346. From April 26, 2005 through May 10, 2005, the dumpsters at the Bullpen contained bags of RACM that was stripped, removed, dislodged, cut, drilled, and/or disturbed during demolition or renovation activities at the Texas City Refinery.

347. From April 26, 2005 through May 10, 2005, BP Products failed to adequately wet the RACM contained in the bags located in the dumpsters at the Bullpen and failed to ensure that the RACM remained wet until collected and contained or treated in preparation for disposal in accordance with 40 C.F.R. § 61.150.

348. These acts or omissions constitute violations of 40 C.F.R. § 61.145(c)(6)(i) of the Asbestos NESHAP.

349. Unless restrained by an order of this Court, BP Products' Texas City Refinery will continue to violate the Asbestos NESHAP and the CAA.

350. Pursuant to Section 113(b) of the CAA, 42 U.S.C. § 7413(b) and the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461 note, as amended by the Debt

Collection Improvement Act of 1996, 31 U.S.C. § 3701 note; 69 Fed. Reg. 7121 (February 13, 2004), BP Products is subject to civil penalties of up to $27,500 per day for each violation of the CAA and Asbestos NESHAP occurring between January 30, 1997 and March 15, 2004, up to $32,500 per day for each violation occurring between March 16, 2004 and January 11, 2009, and up to $37,500 per day for each violation occurring after January 11, 2009.

SUPPLEMENTAL THIRTY-EIGHTH CLAIM FOR RELIEF - CAA (Asbestos NESHAP)

(40 C.F.R. 61.150(a)(1)(iii) - Failure to Properly Seal ACM in Leak-Tight Containers)

(Texas City Refinery)

351. The allegations in Paragraphs 1 through 73 and Paragraphs 333 through 347 are hereby re-alleged and incorporated by reference as if fully set forth herein.

352. From April 26, 2005 through May 10, 2005, with respect to the RACM contained in the bags located in the dumpsters at the Bullpen, BP Products failed to seal all such asbestos-containing waste materials in leak-tight containers while wet during the collection, processing, packaging, or transporting of these asbestos-containing waste materials. Alternatively, with respect to the RACM contained in the bags located in the dumpsters at the Bullpen, BP Products discharged visible emissions to the outside air during the collection, processing, packaging, or transporting of these asbestos-containing waste materials.

353. These acts or omissions constitute violations of 40 C.F.R. § 61.150(a)(1)(iii), or alternatively, 40 C.F.R. § 61.150(a), of the Asbestos NESHAP.

354. Unless restrained by an order of this Court, BP Products' Texas City Refinery will continue to violate the Asbestos NESHAP and the CAA.

355. Pursuant to Section 113(b) of the CAA, 42 U.S.C. § 7413(b) and the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461 note, as amended by the Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701 note; 69 Fed. Reg. 7121 (February 13, 2004), BP Products is subject to civil penalties of up to $27,500 per day for each violation of the CAA and Asbestos NESHAP occurring between January 30, 1997 and March 15, 2004, up to $32,500 per day for each violation occurring between March 16, 2004 and January 11, 2009, and up to $37,500 per day for each violation occurring after January 11, 2009.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, the United States, respectfully requests that this Court:

1. Order Defendants to immediately comply with the statutory and regulatory requirements cited in this Complaint under the Clean Air Act, CERCLA, EPCRA and RCRA, and with the Consent Decree;

2. Order Defendants to take appropriate measures to mitigate the effects of their violations;

3. Award the United States civil penalties of up to $27,500 per day for each violation occurring on or before March 15, 2004, up to $32,500 per day for each violation occurring between March 16, 2004 and January 11, 2009, and up to $37,500 per day for each violation occurring after January 11, 2009;

4. Award the United States its costs and expenses incurred in this action; and

5. Grant such other and further relief as may be just and proper and as the public interest and the equities of the case may require.

Respectfully submitted,

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